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UNIVERSITY OF ALBERTA

"Blighted Prospects and Wounded Feelings:" Breach of Promise in Victorian Law and Literature

BY

Karin L. Kellogg

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment of the requirements for the degree of Master of Arts

DEPARTMENT OF ENGLISH

Edmonton, Alberta
Fall, 1995

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled "'Blighted Prospects and Wounded Feelings:' Breach of Promise in Victorian Law and Literature" submitted by Karin L. Kellogg in partial fulfillment of the requirements for the degree of Master of Arts in English.

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For My Mother

ABSTRACT

Trials for breach of promise to marry, a legal cause of action entitling plaintiffs to seek compensation for "blighted prospects and wounded feelings," were perceived by Victorians as epidemic. Chapter One examines legal commentary of the period to survey the anxieties invoked by the action, an ideologically disruptive, contested site. Chapter Two focuses on two of the nineteenth century's most sensational trials to reveal the various rhetorical tactics deployed to contain such a threat to the symbolic economy. Chapter Three, finally, reads two novels that foreground sexual betrayal--Mary Barton (1848) and Adam Bede (1859)--for legal rhetoricity, as creative rewritings of the breach of promise narrative.

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INTRODUCTION

> There are a great many things that ought to be worse than death to a virtuous and sensitive woman, and among them should be a prosecution for breach of promise of marriage, with the unwinking sun of legal inquiry glaring upon the most secret and sacred passages of her life, and the court-room's coarse curiosity, and its brutal ridicule of her holiest impulses. ("Sexual" 668)

In growing numbers, women "redundant" in a competitive "buyer's market" went to court, alchemically turning "blighted prospects and wounded feelings" to gold. More than caddish peccadillos, however, were on trial in the breach of promise to marry actions Victorian legal circles perceived as epidemic. Breach of promise became what Poovey dubs a "border case," a heated controversy that marks the limits of ideological certainty, reveals the truly contested, "fissured" nature of Victorian ideology.[1] Ironically, in public, a public orthodoxy inevitably designated contaminating, plaintiffs sought redemption, as well as compensation for the loss of a legal status most private, "covert," in fact.[2] By exposing their "most secret and sacred passages" to the probings of the "unwinking sun of legal inquiry," breach of promise plaintiffs reinscribed women's subordination, of course, but also subverted notions of "essential" womanhood, destabilized the doctrine of separate spheres,

even, perhaps, legitimized the public action of other women. Hawthorne's Hester Prynne, in the marketplace, atop an oxymoronic "pedestal" of shame, becomes a kind of exemplar of the breach of promise plaintiff: "fallen" yet audacious before a gaze at once juridical and commodifying (90).

By examining Victorian legal periodical writings, a hitherto largely overlooked archival resource, Chapter One surveys the anxieties invoked by breach of promise in a profession eager to consolidate prestige and frankly embarrassed by the so-called "ladies' action." Chapter Two focuses on two of the century's most sensational breach of promise cases to reveal the various rhetorical tactics deployed to contain this very real threat to the Victorian symbolic economy and to demonstrate how one plucky plaintiff exploited the narrative dictates of the breach of promise "script" for her own empowering ends. Chapter Three, finally, turns to two novels--Mary Barton (1848) and Adam Bede (1859)--that foreground sexual betrayal and creatively rewrite breach of promise. Here it is shown that breach of promise works both synecdochally and metaphorically, is both a means of extrapolating to ills of the governing social contract and a way of figuring the woman writer herself, necessarily bold yet modest in a masculinely gendered public sphere.

1.See Poovey, Uneven.

2.According to the common law doctrine of coverture, the public personhood of a married woman, a feme covert, was obliterated, "hidden." See Holcombe, Perkin and Shanley.

CHAPTER ONE

"The interest excited," reported the Times in 1826, "is almost inconceivable:"

> As early as seven o'clock in the morning, groups of well-dressed persons of both sexes were collected round the Town-hall, and on opening of the Court, every place and avenue were crammed full. The heat was so intense in Court that the breaths of the crowd condensed on the stone roof of the Hall was continually showering down upon those below. (sic) ("Spring")

Such a "draw" was Peake v Wedgwood, one early example of the century's rash of notorious breach of promise to marry trials, staged "melodramas," really, typically featuring revelations of "gushing effusions," jeers from the gallery and, after 1869, tearful confessions from the witness box of female moral weakness (Heap).[1] Defenders of the action--chivalrous, paternalistic--saw it as a deterrent, however imperfect, to men "who would otherwise, from mere wantonness, trifle with the affections of women" (Hansard's May 6, 1879 1876). Others deplored it as both symptom and cause of a public moral degeneracy, a decline into prurient voyeurism and "sensation-loving" ("Sexual" 667). Lawyers in particular, members of a dignity-sensitive profession then coming into its own, saw "something ludicrous," something demeaning, even, "in the very idea of employing

highly trained legal intellects in giving legal effect to such impalpable trifles as lovers' vows" ("Breach"). Victorian legal periodicals are filled with criticisms of the anomalies and supposed abuses of the "ladies' action," as it is called.[2] Repeatedly, appeals were made for its abolition. One solicitor, Charles J. MacColla, was sufficiently inspired to write a book-length study of "The Great Social Question."

In fact, the issue becomes what Poovey terms an anxiety-riddled "contested site," a kind of ideological "hot spot," where the "fissured" nature of Victorian ideology, seemingly so coherent, is revealed (Uneven 3). Here assumptions about woman's "nature"--her selflessness, her passivity, her modesty, for example--are contested. Here meticulously constructed notions of a "feminine" separate sphere immune from "masculine" self-interest, aggression and commercialism are destabilized. Breach of promise is a "border case:" an explosive issue with the potential to expose, once and for all, the artificiality of the binary logic, the articulation of difference upon sex, that underlies the entire Victorian symbolic economy and sustains its concomitant sexual division of labour, its inequality of political rights, and its model of benevolent female moral influence (Poovey Uneven 12). Outcry culminated, on May 6, 1879, in the tabling by Farrer Herschell, then

Liberal Member for Durham, of a resolution in the House of Commons to limit radically the amount of damages to be available to breach of promise plaintiffs.

One of Herschell's more lawyerly objections to the cause of action, that it lacked a "flavour of venerable antiquity," as he put it, is rather misleading (Hansard's May 6, 1879 1869). In fact, ancient canon law of the ecclesiastical courts recognized and enforced certain witnessed promises of marriage. If words exchanged were deemed to amount either to a contract per verba de praesenti, that is, a contract of present intention to marry, or a contract per verba de futuro cum copula, a consummated future intention to marry, the church courts would decree a kind of specific performance.[3] The defendant would be enjoined penance and ordered to solemnize publicly his marriage to the plaintiff. Refusal could result in excommunication. Post-Reformation, the ecclesiastical courts atrophied and, indeed, ceased to exist altogether for a period during the Interregnum. Meanwhile, the secular common law courts had developed an independent source of redress in the form of the action on the case, soon known as assumpsit. Conduct once a matter of church discipline became grist for civil litigation. In Dickison v Holcroft, a 1673 case, it was held for the first time that relief might be sought at common law, in the form of

common law compensatory damages, for a breach of promise to marry. Finally, with the passage of Lord Hardwicke's Marriage Act in 1753, any ecclesiastical jurisdiction over matrimonial contracts was definitively ousted. Section 13 provided:

> in no case whatsoever, shall any suit or proceeding be had in any ecclesiastical court, in order to compel a celebration of any marriage in facie ecclesiae, by reason of any contract of matrimony whatsoever, whether per verba de praesenti, or per verba de futuro.

Jilted parties were thus left with one remedy: to sue at common law for monetary damages.[4]

Ironically, the mid-Victorian breach of promise plaintiff seeks compensation for the loss of the very status that would render her a legal cipher, lacking capacity--like an infant, like the mentally incompetent--to sue, be sued, or enter a contract in her own name.[5] Juries, who had more or less unfettered discretion in assessing damages, were instructed to consider the defendant's affluence, the plaintiff's loss of establishment in life, her "blighted prospects" for another marriage, her "wounded feelings," and all out-of-pocket pecuniary losses, such as the cost of a wedding dress, trousseau, or a resigned employment situation. Aggravated damages were considered appropriate if seduction had taken place or if the engagement had been a particularly lengthy one and the plaintiff had

therefore become "shop worn" or, as one commentator bluntly put it, "permanently depreciated in the matrimonial market" ("Breach"). Particularly heinous conduct on the part of the defendant might call for punitive or exemplary damages. The anomaly ruffled legal formalist feathers: tort-like damages for pain and suffering in an action framed ex contractu, that is, in breach of contract.[6]

Often, critics resorted to specious, circular reasoning. "The plaintiff had lost a husband," Baron Bramwell, Lord Justice of Appeal and fierce opponent of the breach of promise action, is reported to have once instructed a jury:

> with an income of £400 a year, but then she could not have had the income without having him too, and as it was, though she had lost the money, she had also got rid of him; and it did not appear that he much cared for her, so in one sense her loss was a gain. ("Legal")

Overlooked, of course, is the unforgiving Victorian code of female purity, according to which an abortive engagement would irredeemably "taint" a woman, forever render her unmarketable "damaged goods," initiate, even, the always precipitous "fall." Sergeant Taddy, plaintiff's counsel in Phillips v Crutchley, explains:

> To be rejected or deserted by the man to whom they might be upon the point of marriage, was the severest injury that could be inflicted on [women] in this world. It would be immediately imagined that they had been guilty of some great

> impropriety of conduct; and the ever-ready tongue of scandal would not fail to attribute reasons which might affect the reputation of her whose feelings has been shamefully sported with. (sic) (Phillips)

"The reputation of a woman [is] so tender, so delicate," continues the Sergeant, "that the slightest breath might destroy it; and being once destroyed, nothing [can] restore it." The merest "breath," that is, mere exhaled insinuations, defile, even, perhaps, deflower. "Where was the man," concludes Taddy, in a typical conflation of woman and the conventional symbol of her sexual chastity, "who would gather up the flower which had been thrown away by his neighbour?" For Ruskin, prostitutes were such "feeble florets," with "fresh leaves torn," with "stems broken" (140).

Inevitably, the breach of promise plaintiff invokes her more degraded sister, the "fallen woman," transgressive prototype of Victorian pure womanhood. She is financially compensated, after all, for her unchastity, metaphoric or literal, by twelve hypothetical "johns," an all-male panel of jurors who appraise her sexual marketability, her "resale value," so to speak.[7] She is a "public woman," for Victorians tropologically interchangeable with the prostitute, the actress, and other female "deviants."

However, unlike those wretched victims portrayed obsessively in the art and literature of the late 1840's

and early 1850's, those pathetic prostitutes seen, for example, in the works of Rossetti, Watts, Hood and Dickens, the breach of promise plaintiff is agential, defiant, even, oddly enough, slyly subversive. Her suspiciously "masculine" refusal to "suffer and be still," as it were, obscures the oh-so-meticulously delineated differences between man and woman fundamental to the Victorian social order. Paradoxically, while invoking male chivalry, while perpetuating the most objectionable of patriarchal notions--female dependency upon marriage, female chastity as cachet, for example--she undermines the very assumptions of woman's "nature"--passivity, modesty, selflessness--that biologically naturalize her political and economic subordination and underlie the entire Victorian doctrine of separate, but supposedly equal, spheres.

By emerging from "feminine" domesticity into a most "masculine" public forum, the court room, she pierces the Victorian purdah, she desegregates a sexual apartheid. The breach of promise action becomes, in fact, a kind of "hinge" or "threshold" between the affective, transcendent "feminine" sphere and the commercial, self-interested "masculine" world. A notion central to classical liberalism from Locke on, that the private sphere is properly immune from legal intervention, a domain in which, it is often said, "the King's writ does

not seek to run, and to which his officers do not seek to be admitted," is unsettled (qtd. in O'Donovan 13). That most sacrosanct is encroached upon; the limits of the law's regulatory reach are newly drawn. Critics feared the "innate" moral superiority of woman, so crucial to the preservation of virtue in an era of rapid capitalist expansion and religious doubt, would be hopelessly contaminated by the very crassness, the very self-interest, she was meant to forestall.

For many, the immodesty of such proceedings was especially worrisome. Fears of an emergent, desexed species, devoid of the modesty that is the very sine qua non of Victorian femininity, often arise. "The very fact," one commentator argues:

> that a woman will go into a court and permit her heart's secrets to be exposed to public gaze, and her love passages made the jest of counsel and the provocation to "shouts of laughter," is of itself proof that she is not a woman whom any man ought to be compelled to marry.

"The action," he concludes, in another resort to rather circular reasoning, "answers itself:"

> It should be said, "Your presence here is proof positive that you had no true womanly feelings to be outraged, and therefore you have incurred no damage." ("The Action For Breach of Promise of Marriage")

The scenario was inevitably sexual, it seems. A woman's "secret and sacred passages," her most "secret

recesses," were laid bare before a voyeuristic, promiscuous "public gaze" ("Sexual" 668). Railing against a particular case brought by an American woman, one commentator tells of the ancient Greek advocate of "the fair and frail Phryne," who, when he could not otherwise move the jury in her behalf, "stripped the robe from her shoulders, and exposed her beautiful form to the gaze of the assemblage." "The modern American woman," he analogizes:

> voluntarily bares her own moral nakedness to the court, and believes that the spectacle will gain her sympathy and a verdict. ("Sexual" 667)

Such exhibitionism, it seems, is traumatic, transformative and irredeemable. A plaintiff "never will be quite the woman after her verdict that she was before" ("Sexual" 668). Apparently, the essence of woman is murky, mysterious, photosensitive, really, and best not penetrated by "the unwinking sun of legal inquiry" ("Sexual" 668). Like Hawthorne's audacious, "fallen" Hester Prynne, the breach of promise plaintiff "wrong[ed] the very nature of woman...[by] lay[ing] open her heart's secrets in broad daylight, and in presence of so great a multitude" (90, 92).

A pervasive Victorian anxiety is signalled. The "unwinking sun," if probing enough, might reveal essential woman to be, not man's passionless, angelic spiritual guide, but rather a being as sexual, as

bestial, even, as Victorian man assumed himself to be. Book I of Spenser's Fairie Queene, in which Duessa's grotesque body of animal sexuality, a body of "secret filth" and loathsome "neather parts," is stripped bare before the male gaze of the Redcrosse Knight, comes to mind (8.46 and 48). The Victorian legal community, similarly, dreaded discovering a Whore of Babylon within every frustrated Angel in the House.

Such anxieties only intensified after 1869, a watershed year for the breach of promise action. Prior to the passage on August 9 of that year of the Evidence Further Amendment Act, evidence at trial was confined to witnesses and the lovers' correspondence, movingly read by counsel, no doubt much to the amusement of the gallery. With passage of the Act, however, parties were competent to take the witness box. The 1851 Evidence Amendment Act had deemed admissible the testimony of parties to other sorts of civil litigation, but had specifically exempted parties to breach of promise and adultery actions as people irresistibly tempted to perjure. For Thomas (later Lord) Denman, who moved for the bill's second reading, this was a "monstrous anomaly" and:

> the only relic of the absurd old presumption that where parties had so deep a stake in the case their evidence was not to be trusted, and that the truth was to be served by shutting out the testimony of perhaps

> the only persons who had an accurate knowledge of the facts. (Hansard's Apr. 28, 1869 1801)

Vigorous cross-examination and the Act's eventual requirement that a plaintiff's testimony be materially corroborated would, it was hoped, check dubious actions.[8]

After 1869, then, the witness box became a kind of confession box. For the first time, the breach of promise plaintiff was subjected to the insistent probings, the leading questions permissible in cross-examination, of a defence counsel intent on discrediting her as unchaste or, better still, a perjuring hysteric, Victorian icon of aberrant, delusional female sexuality. The breach of promise action became, in effect, another of the proliferation of incitements to speak interminably, exhaustively of sex that, argues Foucault, characterize the nineteenth century. Hitherto murky sexual histories were flushed out, constrained to lead a discursive and, therefore, tractable existence in harsh daylight. In Foucauldian terms, the court room, like the confessional, like the analyst's couch later, became a "local centre of power-knowledge" in which the plaintiff was both "subject" of and "subjected" to an almost orgasmic rush of "truth," her own tearful admissions induced at counsel's proddings before authoritative "masters of truth," that is, an all-male judge and jury endowed with power to assess, console, punish and

decipher, hermaneutically, legal meanings (98, 61, 67).

Parallels may be drawn to the anxieties revolving around another, better known Victorian abolitionist movement, the movement to repeal the three euphemistically entitled Contagious Diseases Acts (CD Acts) of the 1860's, legislation that instituted routine internal examinations of suspected "common prostitutes" in an effort to staunch the epidemic spread of venereal disease amongst enlisted men.[9] The cross-examining defence counsel, like the speculum-wielding medical man, was now armed with an intrusive instrument of surveillance with which to probe female interiority, to gaze upon the very "womb" of woman, so to speak, to define and categorize that most intimately and mysteriously feminine. Like the so-called "steel penis," which was believed by some to incite female moral depravity--nymphomania, "self-abuse," for example--the quite phallic "unwinking sun of legal inquiry" perverted, merely by transforming female sexuality into discourse.

Contracts scholar P.S. Atiyah cites the following year, 1870, as the very apex of the freedom of contract, the "heyday of classical law" founded on the principles of the free market enunciated by such political economists as Adam Smith, Thomas Malthus and David Ricardo (404). Passage of the Evidence Further Amendment Act had meant that, procedurally, breach of promise

plaintiffs were to be treated much like other civil litigants. Now, with a line of cases inaugurated in 1859, the principles of classical contract theory--notions, for example, that all freely-entered bargains are to be, prima facie, judicially enforceable, that courts will not readily intervene to spare defendants from the consequences of their rashly entered contractual obligations, that predictability, not necessarily substantive fairness, is of first priority--were impartially applied to the whispered intimacies of lovers. The results, of course, were incongruous. Certain presumptions underlying such a model of contract theory--equality of bargaining power, for one, self-interested, "arm's length" negotiations, for another--are, perhaps, nearly always fictitious, but surely never more so than in the "buyer's market" that is the mid-Victorian marriage market. One resultant, rather unnerving tendency, the Victorian legal impulse to metaphorize women's bodies as unmarketable commodities, as capital with a limited "shelf life," has been noted already.

A breach of promise case, the 1859 case of Hall v Wright, symbolizes for Atiyah the thorough triumph of such market-based law, its dominion over even those agreements seemingly least mercantile. Here a majority of the Exchequer Chamber refused to accept a defendant's

life-threatening illness as an excuse for the non-performance of his marriage proposal. A contract of marriage was not as "peculiar," they found, as his lawyer would maintain (697). "The general rule upon the subject," explained Baron Martin:

> is, that, when a person by his own contract creates a duty or charge upon himself, he is bound to make it good if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it. (704)

"I think it very much better," he concluded, "to adhere to the rule than to create an ordinary exception for which, no doubt, plausible reasons may be given" (704). Chief Baron Pollock's misgivings at thus placing engagements "on the same footing," as he put it, "as a bargain for a horse or a bale of goods," were utterly disregarded (706).[10]

By the 1860's, then, a doctrine of strict contractual liability, a kind of caveat emptor in keeping with the laissez-faire dictates of the free market model, was applied even to the murmured exchanges of lovers. Only fraud, undue influence, or illegality could exonerate a defendant. Evidence of unchastity on the part of the plaintiff, introduced at trial by way of witnesses' testimony or her own wrung admissions under cross-examination, was equally exculpatory, but the strategy was a risky one: a vicious, unpersuasive attack on a plaintiff's reputation might entitle her to punitive

damages.[11] The promises of persons non compos mentis, like those of intoxicated persons, were voidable at the option of the promisor, so long as the plaintiff was aware of his condition and it rendered him incapable of understanding the significance of his actions. The promises of minors, similarly, were not binding at common law without subsequent, of-age ratification.

All contracts--be they of horses, bales, or marriage--came to be formed identically, according to common law rules of offer and acceptance still in existence. Offers may be made by words, by conduct, or a combination of the two. They may be express or implied, conditional or absolute. Silence alone cannot constitute acceptance, but silence combined with certain gestures or conduct may be construed as binding. Once communicated, acceptance is irrevocable and binding on both sides, but offers may be rescinded or may lapse at any time prior. With a few exceptions, contracts need not be evidenced in writing.[12]

Because, as one commentator observes, "virgins promise themselves away, for the most part, in retired nook[s], far from spectators," the conduct of breach of promise parties was scrutinized judicially, "read" for certain recognized "indicia" of binding offer and acceptance ("Espousals" 125). Mr Van Zyl, an Anglo-Dutch jurist, enumerates several:

> Frequent visits to the house of the lady, and seeing her alone, and being otherwise frequently seen in her company; going out with her for walks or drives or rides; withdrawing themselves at parties or dinners or games to secluded or isolated spots; or their behaviour in a ball room, by noticing each other as if they were each other's exclusive property, or coming to enjoy themselves only, and not considering others; or presents given to each other, kissing and winks or signs which they do not wish others to know of; carrying out each other's wishes or desires as to accepting or declining invitations or as to dress; or the gentleman less frequently visiting other families than formerly, and being in consequence seen more at the lady's house than usual, and also frequenting his club less during his spare hours; also, by more frequently going with the lady to her church, and less to his own; and otherwise by constantly paying her unusual and marked attentions wherever she may be, and which, if she does not openly reciprocate, she certainly does not avoid. (emphasis in original)[13]

"All these little acts, incidents, and occurrences," says Van Zyl, "when put together, go far to prove the intention or leaning of the parties" ("Espousals" 130-1). Like some bewildering "text," male-female relationships were interpreted, construed against an ordering legal schema.[14]

Victorian juries were disposed, it seems, to "read" women sympathetically, as pitiable victims.[15] Critics frequently scorn jurors, even "feminize" them, as soft-hearted, soft-headed naifs. "How juries," one commentator complains:

> having a knowledge of the world can award the outrageous damages they so often give

> in cases where forty shillings would exceed the plaintiff's deserts, is one of those mysteries of the jury-box which the lawyers, who are excluded from that sage tribunal, are wholly unable to explain. ("Action For Breach of Promise")

Men of the world, lawyers, that is, he implies, are far savvier in the ways of woman.

Ironically, despite the hopes of the framers of the Evidence Further Amendment Act, jurors seem to have found witness box revelations of female sexual transgression not censurable, but, instead, affecting and even, perhaps, sexually titillating. One commentator tells of an action brought immediately after the passage of the 1869 legislation by a certain "pretty housemaid" against the son of her employer ("Parties" 389). She had claimed the defendant kissed her often and once promised to marry her when his father died. Despite a seemingly fatal admission under cross-examination, that other men about the place had kissed her as well and she had, "in fun," once consulted an attorney about bringing a breach of promise action against another suitor, an obviously smitten jury awarded her £200 in damages (389). The inequity and illogic of such tendencies are often deplored. "If the girl be pretty," observes J. Dundas White:

> the jury generally give her heavy damages; if she be unattractive, they often have a sneaking sympathy with the man. She who has her fortune still before her is handsomely recompensed, while her plainer

> sister, who could ill afford to lose the best years of her life, is often sent empty away. (141)[16]

The breach of promise plaintiff, then, became a new take on the femme fatale, a femme, that is, fatale to that symbolic of manhood itself in an increasingly commercial world, the male pocketbook. In an elaborate metaphor, MacColla likens breach of promise plaintiffs to pilot-fish, "invaluable friend[s]" of the shark-like law (45). The male defendant, he says, is "partly disabled by the lady pilot-fish, and then mangled by the legal jaws" (45). "Parasites," presumably Guppy-like minions of the legal system, "always cling to the monster [and] are not slow to seize the opportunity of a dainty meal" (45). Elsewhere, the action is said to be another "weapon" "in the social armoury" of "wily spinsters" and "crafty mothers" ("Action For Breach" 32).

A stereotype of dangerous womanhood, of disabling, siren-like female sexuality, emerges. The Law Times of February 25, 1865, for example, was outraged by a certain "monstrous" case in which an invalid Member of Parliament was "tempted" into a hasty and costly engagement "with a woman of inferior rank" and returned to his senses only "when removed from her influence." "As a matter of fact," another commentator generalizes:

> nine-tenths of the actions for breach of promise of marriage are purely mercenary. The woman has first deliberately set a trap for the man,

> and caught him, as designing mothers
> and clever daughters know so well how;
> and it is a matter of calculation
> that the victim must be bled somehow.
> ("Action For Breach of Promise")

Like the black widow, it seems, or better, the vagina dentata, plaintiffs use their sexual charms to entrap, maim, even symbolically "unman" defendants by "snatching" their billfolds.

For fear of those "dreaded jaws," those "manifold, shark-like teeth ever open to devour," men protect themselves (MacColla 45). One solicitor, G.R. Dodd, in a widely-reported speech given in Nottingham to the Incorporated Law Society, tells of an acquaintance who takes the precaution of having his love tokens engraved with the words "without prejudice" before he presents them (793).[17] While not adverse to marriage, such bachelors, it seems, are:

> firmly resolved not to make any
> advances with such object in view
> until the present law should be
> altered, fearing...action[s] for
> breach of promise. (793)

Celibacy, an "immense loss to the British nation," results (MacColla 46).

Thus, in consummate "chicken and egg" reasoning, breach of promise critics attribute the emergence of the so-called "redundant" or "surplus" woman, a kind of "statistical body" called into being by the 1851 Census, to the legal cause of action almost certainly

necessitated in part by her. Female assertiveness, an attempt to "level" a matrimonial "playing field" pitched very much in favour of Victorian males, is conveniently blamed for the mid-century swelling population of unmarried middle-class women traceable, in fact, to such wide-scale social phenomena as male emigration and differential mortality rates.[18] MacColla's facetiously suggested alternative to litigation, the "lovers' leap," that "ancient cure for disappointed lovers," is really rather nastily misogynistic and even more extreme than social reformer W.R. Greg's vaguely penal suggestion of mass transportation to "bleed" a body politic "congested," as it were, with spinsters ("Why" 62).

Another explanation for the action's mid-century epidemic may in part lie in certain provisions of the notorious New Poor Law, the Bastardy Clauses of the 1834 New Poor Law Amendment Act, according to which affiliation proceedings available since 1733 allowing the testimony of an unwed mother to result in the arrest and imprisonment of a putative father for arrears in weekly child support payments were all but eliminated. Parish authorities might make application at the costly Quarter Sessions for indemnification for the cost of maintaining an infant, but a mother's evidence now required independent corroboration of paternity. Maintenance payments were to be payable to the parish, not to

mothers, and fathers could no longer be imprisoned for arrears. Until passage of the so-called Little Poor Law in 1844, which restored a mother's cause of action in the more accessible Petty Sessions but retained the legislation's stringent corroboration requirement, an illegitimate child was truly what the Poor Law Commissioners maintained Providence had ordained it should be, "a burthen on its mother" (Report 350).[19] Indeed, according to Gillis, even after 1868, when Poor Law guardians were finally allowed to assist, a mere one-tenth of unwed mothers succeeded at affiliation suits, obtaining a maximum of five shillings per week in maintenance, an amount hardly adequate to meet costs in an era of rising prices (For Better 258). Given such a gaping hole in the nineteenth-century social safety net, breach of promise awards might well have been used as a kind of subterranean lump sum child support by those one in four plaintiffs Frost finds had been "seduced" (111).

The anecdotal evidence taken in preparation of the Poor Law Commissioners' proposed recommendations, a litany of supposed abuses of the Old Poor Law's affiliation proceedings heard by a Royal Commission and Select Committee of the House of Lords in 1831, in fact anticipates many of the anxieties invoked by the breach of promise action. Like the breach of promise trial, the immodesty inherent in the affiliation suit was believed

to be degrading, corrupting of true womanhood. "It [is] quite clear," Bishop Blomfield, one of the Commissioners, reasons, "that when an unfortunate woman cease[s] to blush, she ha[s] no scruple in making her shame her trade" (qtd. in Henriques 110). Like a prostitute, her sexuality becomes for her, as for the breach of promise plaintiff, a "source of emolument" (Report 169). Women are inevitably represented here, as in the criticisms of the breach of promise action, as monstrous, scheming husband-hunters. "[A] woman of dissolute character," testifies one witness, Mr Simeon, "may pitch upon any unfortunate young man whom she has inveigled into her net, and swear that child to him" (Report 176). "You thus secure to her," he continues, "what every woman looks upon as the greatest prize--a husband" (Report 176). Familiar paranoic visions of female conspiracy emerge:

> I know of many instances in which the mothers have themselves been instrumental in having their daughters seduced, for the express purpose of getting rid of the onus of supporting them, and saddling them upon any unfortunate young man of the neighbourhood whom they could get to the house. (Report 176-7)

Again, the vagina is frightening, entrapping, even, it seems, alchemical. According to Charles Sawyer, a justice of the peace from Berkshire, "boys" are "continually converted" by its "process" "into husbands" (Report 173).

As in the breach of promise criticisms, a stereotype the medical and legal professions were complicit in constructing emerges: the perjury-prone woman. The "hysterization" of the female body accomplished by nineteenth-century medicine both legitimized her vigilant surveillance and discredited her word. Putative fathers, like breach of promise defendants, felt themselves to be at the mercy of vengeful, jilted women, creatures in turn, went medical wisdom, at the whim of a host of gynaecological processes--pregnancy, lactation, the "monthlies"--tending to unhinge, derange.[20] Hysteria, always ill-defined aetiologically but etymologically uterus-based, was associated with emotional volatility, duplicity and delusions, particularly sexual ones. "Among younger women," one medical man describes, "we occasionally meet with those who imagine that they have been injuriously affected by some man" (qtd. in Edwards 97). "Such," he says:

> will write compromising letters, or make accusations against gentlemen, demanding satisfaction, or that their characters shall be cleared before the public. (qtd. in Edwards 97)

The unmarried were especially prone, it seems. Henry Maudsley, prominent Victorian psychiatric physician, evolved a term, "old maid's insanity," to describe women, victims of "ovarian and uterine excitement," who "believe themselves to be seduced or ravished by persecutors

during the night" (qtd. in Edwards 98). Suspicions of the similarly disorienting effects of female sexual arousal surely underlie a remark made by Lord Justice Bramwell in Bessela v Stern, the Court of Appeal case which defined the parameters of the newly enacted corroboration requirement for the testimony of breach of promise plaintiffs. "It is not too much to suppose," he surmises, "that a woman under similar circumstances does sometimes fancy that a promise has been made to her" (271). The False Accusation Hypothesis, as Edwards has dubbed it, became a convenient and enduring weapon in the arsenal of breach of promise defence lawyers.

Bramwell comes to epitomize a deep-seated ambivalence within the legal profession. "Something of a fanatic," according to Atiyah, in his adherence to principles of laissez-faire economics, in his opposition to all parliamentary intervention upon freedom of contract, Bramwell yet heartily favoured abolition of the logical extension of such notions, the breach of promise action (380). For him, as for many of his profession, marriage was sacrament, not contract, a blessed sanctuary from crass self-interest and the alienating cash nexus, a sacrosanct microcosm of a stable, ordered society. Thus the distaste many shared with Farrer Herschell at the claims made by nine unknown signatories to a petition presented to Parliament in response to the proposed

abolition of breach of promise:

> The petitioners declared that marriage was a profession in which women earned their livelihood by the discharge of the social, conjugal, and domestic duties which appertained to matrimony; that the entrance into that profession came through an offer of marriage; and that the breach of such a promise hindered a woman from obtaining her proper station in life. (Hansard's May 6, 1879 1871)

"Earned her livelihood!" objected Herschell:

> He did not like the phrase, as it was impossible to admire too much the devotion, the zeal, and the unselfishness with which women performed their social and domestic duties, and endeavoured to promote the happiness of the men to whom they were united...he protested against the view that women performed those duties by way of return for board and maintenance as being as degrading as it was untrue. (Hansard's May 6, 1879 1872)

The oxymoron, wage-earning angels, destabilized those notions of woman's selfless, morally superior "nature" so critical to a society committed to, and yet concerned by, industrial capitalism. The marketplace had penetrated, even prostituted, the Victorian home.

Similarly, marriages under threat of a breach of promise suit, in terrorem is the legal phrase, defiled. Coerced, loveless marriages were a "desecration" of the altar-like "nuptial bed," "a pollution of the most sacred earthly covenant" (MacColla 58 "Breach of Promise" 403). For many, the breach of promise action represented an anachronistic hearkening back to the cold, mercenary marriages a la mode of the aristocracy. An interesting

transatlantic rivalry emerges. While conceding actions by "fair plaintiffs" "grew more numerous and their victories more magnificent," English solicitor J. Dundas White, in a rather premature use of the past tense, maintains "they never in [his] country reached that phenomenal state which they apparently attained in the United States" (137). According to the Washington Law Reporter, on the other hand:

> a marriage obviously one of convenience, is apt to call forth more disparaging criticism in the average American community to-day than it would have excited fifty years ago, or than it does at present in a land of aristocratic traditions and institutions.

"With the advance of enlightened sentiment," it is argued, "the reluctance grows greater to formally protect by law the mercenary inducements to marriage" (sic) ("Present").

Breach of promise undermined the Englishman's sense of moral superiority, his sense of national character that legitimized both his country's imperialist ambitions and his own class's ascendancy over the landed aristocracy. The odd suit brought by a male plaintiff, always sarcastically reported by the press, was similarly embarrassing, a threat to, but also a defining transgression of, fragile constructions of independent, industrious middle-class masculinity.[21] A male breach of promise plaintiff, in positioning himself as jilted

victim, as object not agent, inevitably "feminizes" himself. His pose of economic and emotional dependence on woman was antithetical to an ever-negotiated masculinity requiring disparagement of, and assertion over, the "feminine" within and without. His "ladies' action" blurred the tidy, mid-Victorian articulation of difference upon sex and its concomitant sexual division of labour.

Since the 1698 case of Harrison v Cage, men were only socially precluded from suing in breach of promise, though their damages, in the nineteenth century, were usually contemptuous and nominal. In Townsend v Bennett, for example, an 1875 case brought by a male tenant against a landlady worth "many hundreds a year," the plaintiff was awarded a mere five guineas in damages and denied costs. Justice Brett, in a charge to the jury much applauded in legal circles, explained:

> If a man had been for years kissed by a woman, he certainly was not much the worse for it--but if a woman had been for years kissed by a man, and the engagement was broken off, would that render any other man quite so desirous as he might have been to kiss her? If a woman happened to be jilted, people were apt to consider before they determined to be a second suitor. But did this apply to a man?...All women were creatures that should be worked for by men, and no man--that was, no real man--had any other thought...When a woman became engaged she looked forward to a comfortable home, where she would be worked for; and that prospect she would lose by the engagement being broken off. A man, however, after the breach of such an engagement, would have the

> same power of working for himself as before, and in this respect, therefore, the man was not in the same position as the woman.

Significantly, cases brought by American and French men were overrepresented in the English press. In one, an 1841 Indiana case the Times conspicuously entitled "Yankee Breach of Promise," the reporter editorializes:

> We think the pecuniary compensation was ample enough, and more than we would have awarded so poor a creature; but the jury ought to have recommended the defendant to mercy, and a commutation of the fine. She ought to have been allowed to pay each dollar by a pound a piece with his own pestle upon the head of the plaintiff.

"This business of suing a woman for refusing to marry a man," it was concluded, "would not be resorted to by any one having soul enough to keep his body together by labouring at journey-work for a knitter of cotton garters." Especially in the political climate of the 1860's, a time of renewed debate regarding working-class franchise, the traits of the "respectable" English workingman--industry, independence, forthrightness--would be extolled.[22]

"No one can assert," one would-be Mr Dove remarked in 1884, "that the average breach of promise trial exhibits the majesty of the law in a very dignified light" ("Breach"). For many a Victorian lawyer, as for Trollope's type of the scholarly, fastidious barrister, Law was poetry, not to be thus demeaned. Nevertheless, of the no fewer than five bills tabled in Parliament

between 1878 and 1890 to abolish breach of promise to marry, not one attained a second reading, and Herschell's 1879 resolution, albeit accepted by a healthy majority of the House, was of a merely declaratory, non-binding effect.[23] For nearly a century to come, in fact, women were "framed" in this legal narrative of victimhood, of dependency.[24] Until educational and employment opportunities made spinsterhood less economically, as well as socially ignominious, that is, until the feminist ideal became reality, breach of promise would remain a noxious and embarrassing vestige of female dependence upon marriage.

1.The view of Victorians that such trials had become "epidemic" was not without foundation. According to Frost, from 1859, the first year for which such statistics are available, the number of trials brought per year increased "substantially." In the 1860's, an average of 34 per year were brought; in the 1870's, 59; in the 1880's, 48; and in the 1890's, 67. Aside from a slight decrease in the 1880's, then, the number of such trials had nearly doubled in the space of thirty years (85).

2.According to Frost's data base of 875 cases between 1750 and 1970, fully 97 per cent were brought by female plaintiffs (98).

3.The use here of the term "specific performance" is probably anachronistic. It refers to a remedy of the secular courts of equity that, in fact, survives to this day. Always discretionary, specific performance orders a defendant to perform the terms of a breached contract. It will be granted only when the subject matter of the contract is somehow irreplaceable--land, unique chattels, for example--and, thus, monetary damages would be inadequate compensation for its loss. The secular courts would never grant specific performance of a promise of marriage, a contract of personal service.

4.See "The Action," Staves, "British," Gillis, For Better and Coombe.

5.The common law doctrine of coverture, and the series of nineteenth-century feminist-urged legislative inroads upon it, is well-documented. See, for example, Holcombe, Perkin and Shanley.

6.Herschell's resolution, which would have brought damages here in line with those of all other actions for breach of contract, read as follows:

> ...the action of Breach of Promise of Marriage ought to be abolished except in cases where actual pecuniary loss has been incurred by reason of the promise, the damages being limited to such pecuniary loss.

According to Frost, the average award in the 1860's and '70's was about £200, despite a few, highly publicized cases, such as Berry v DaCosta of 1866, in which plaintiffs were awarded damages as high as £2,500 (93).

7.Not until 1919, with passage of the Sex Disqualification (Removal) Act, were women entitled to sit as jurors.

8.Section 2 of the Evidence Further Amendment Act, 32 and 33 Vict. c.68 reads:

The parties to any action for breach of promise of marriage shall be competent to give evidence in such action: Provided always, that no plaintiff in any action for breach of promise of marriage shall recover a verdict unless his or her testimony shall be corroborated by some other material evidence in support of such promise.

According to Frost, far from discouraging actions, the numbers brought nearly doubled after the Act's passage (85).

9.See Walkowitz.

10.Similar misgivings are expressed in the case of Frost v Knight, in which the defendant promised to marry the plaintiff upon the death of his father, the plaintiff's employer. The Court of Exchequer refused to allow the action while the defendant lived, while the time for performance had not yet arrived, thus ignoring well-established commercial contract caselaw. The decision was overturned on appeal by the Exchequer Chamber in 1872.

11.If the defendant had knowledge of the plaintiff's reputation for unchastity at the time he made the offer of marriage, of course, her lack of chastity could not then later be used to exculpate his breach of contract. A promise of marriage made in consideration of the promisee permitting the promisor to have sexual intercourse with her was void as against public policy: Morton v Fenn (1783).

12.Under Section 4 of the Statute of Frauds, certain agreements, to be enforceable, must be evidenced by written memoranda. For our purposes, only one branch of the Section is important, that requiring contracts "not to be performed within the space of one year from the making thereof" to be in written form. Strictly speaking, if a marriage was not to be performed within a year from the acceptance of the proposal, a court would require evidence in writing of it. According to the 1729 case of Cork v Baker, another branch of the Section, that requiring written evidence of agreements "made upon consideration of marriage," applied only to marriage settlements, not contracts to marry.

13.The "indicia," of course, are middle-class. The breach of promise action may be seen as both a cause and effect of the disruption of traditional plebeian courtship patterns--premarital sex, common law marriages, for example--in the wake of industrial capitalism. See Clark, Gillis, For Better. According to Frost, most actions were, in fact, brought by and against parties she defines as "lower middle-class" (106). The two notorious cases examined in Chapter Two, then, brought by lower-class plaintiffs against aristocratic defendants, were altogether atypical.

14.The impulse is a contemporary one, too. Examples include current attempts to impose order by implementing explicit rules of consent in the "date rape" scenario and codifying definitions of "sexual harassment," such as that expected to appear in the new Code of Professional Conduct of the Law Society of Alberta:

> -telling sexist jokes, displaying material of a sexual nature or using sexually suggestive gestures;
> -using sexually derogatory or degrading words to describe an individual or persons of one gender or sexual orientation;
> -making innuendos, inquiries, propositions, requests or demands of a sexual nature;
> -leering;
> -pinching, patting, rubbing or other physical contact.

15.Seventy-six percent of Frost's plaintiffs were successful at trial (98).

16.Once again, Frost's data may confirm the perception. She finds average awards were highest for plaintiffs in their twenties and dropped sharply for those in their forties. Thus, the women most handsomely compensated were, indeed, those seemingly more likely to marry (102).

17.To preclude any admission of client liability, solicitors as a matter of course often have the words "without prejudice" typed upon their correspondence, especially offers of settlement made to opposing counsel.

18.See Dreher.

19.See Henriques.

20.At law, such presumptions persist. Section 233 of Canada's 1993 Criminal Code, the infanticide provision, recognizes that a woman's mind might be "disturbed" by parturition or lactation and, recently, there has been some judicial recognition of a so-called PMS criminal defence.

21.See Roper. Three percent of the actions in Frost's data base were brought by men (98).

22.Given the relative statistical, if not ideological, insignificance of the male breach of promise plaintiff, it is of interest to note that one of the period's most extensive fictional treatments of the scenario, Can You Forgive Her? by Trollope, features a jilted male character.

23.Bills to abolish breach of promise were tabled in 1878, 1883, 1884, 1888 and 1890. In a lightly attended sitting, apparently, Herschell's resolution was accepted by 106 to 65 (Frost 38). For the resolution, see note 6.

24.Finally, with passage in 1970 of the Law Reform (Miscellaneous Provisions) Act, the action was abolished in England and Wales. In Canada, to date, only the provinces of British Columbia, Manitoba and Ontario have done likewise.

CHAPTER TWO

> "And now, gentlemen, but one word more. Two letters have passed between these parties, letters which are admitted to be in the hand-writing of the defendant, and which speak volumes indeed. These letters, too, bespeak the character of the man. They are not open, fervent, eloquent epistles, breathing nothing but the language of affectionate attachment. They are covert, sly, underhanded communications, but, fortunately, far more conclusive than if couched in the most glowing language and the most poetic imagery--letters that must be viewed with a cautious and suspicious eye--letters that were evidently intended at the time, by Pickwick, to mislead and delude any third parties into whose hands they might fall. Let me read the first: --'Garraway's, twelve o'clock. Dear Mrs B.--Chops and Tomata sauce. Yours, Pickwick.' Gentlemen, what does this mean? Chops and Tomata sauce. Yours, Pickwick! Chops! Gracious heavens! and Tomata sauce! Gentlemen, is the happiness of a sensitive and confiding female to be trifled away, by such shallow artifices as these?" (Dickens 562-3)

Inevitably, it seems, the breach of promise action inspired satire. Bardell v Pickwick, the contribution of a twenty-four year old Charles Dickens, is but the best known.[1] Trial By Jury, a one act operetta by Gilbert and Sullivan featuring a fair, fainting plaintiff and a ridiculously sympathetic jury wont to chorus "Dread our damages/We're the jury,/Dread our fury!" followed in 1875 (42-4). An actual case, the 1872 trial and appeal of Frost v Knight,[2] inspired a piece of punning doggerel

from a John Popplestone:

> He took my love, nor recked the cost;
> My heart was warm to him, my Knight.
> He took away the warmth and light,
> And left me an unchanging Frost.
> .....
> Love did the wrong the law redressed,
> I take the gold the jury gave;
> No more the love he vowed I crave,
> The gold I have, methinks, is best.

Even the lively debate with which Farrer Herschell's 1879 House of Commons resolution was met was, finally, ridiculed by Charles J. MacColla in a kind of mini-mock epic. "A small, stout little body of sixty-five," he records:

> defended the ladies' action against an overwhelming number of assailants. Their defence was gallant (not to say gal-lant) and noble! Fired with that intrepidity which fills a man's breast having the ladies' cause to defend, the staunch little party met the charge of the enemy's host. (53)[3]

In fact, as an examination of two of the century's most notorious and publicized breach of promise cases reveals, Victorians deployed a variety of narrative strategies, of rhetorical tactics, to defuse, contain and trivialize this not so trivial threat to the Victorian symbolic economy, this eruptive site at which the ideological vulnerabilities of a social order founded upon sexually determined separate spheres came to light.[4] Inevitably, the breach of promise to marry action draws our attention to issues of narrativity. It is, after all, a kind of fracturing, a caesura, really, of the

"happily ever after" master narrative of the eighteenth- and nineteenth-century bourgeois novel.[5] A broken promise is a disappointed expectation, an underscoring of the provisionality, the tenuousness, of all social convention, even a gentleman's word.

Law itself, as feminist legal theorist Patricia Williams has observed, is a "rhetorical event" (11). Founded as it is on the doctrine of stare decisis, that is, the acquiescence to prior, factually analogous decisions, common law is inherently intertextual, inherently self-conscious of form, inherently, in this sense, postmodern. An adversarial system of law, such as ours, is one of vigorously contested narratives from which, so goes orthodox legal theory, universal "truths" emerge. Furthermore, all suits are "scripted" according to sets of conventional, uniform pleadings--statements of claim, statements of defence, counterclaims, for example --rather like the formulaic verse forms of Anglo-Saxon scopas. Seemingly empty, but incantatory formulae--"blighted prospects and wounded feelings," for one--are taken from the precedents of Bullen and Leake or Atkin's Court Forms. To a degree, form is all, as an ancient legal maxim, "no writ, no right," would indicate: a plaintiff who fails to establish a recognized legal narrative, a cause of action, risks a nonsuit. Some such narratives, such as that of the breach of promise action,

are particularly ill-fitting, baggy. As Coombs indicates, "The voices demanded by [this] cause of action [are] distorted" (18). The needs of breach of promise plaintiffs--child support, compensation for often cruel sexual exploitation, for instance--have very little to do with the narrative precepts of breach of contract, a narrative of symmetrical consideration,[6] of equal, always rational arm's length transactors guided solely by an "invisible hand" of economic imperative.[7]

Even when a plaintiff's harms are most personal, most "embodied," as they are for the breach of promise plaintiff, the legal narrative is impersonal, disembodied, indeed, dehumanized. The first person is erased from pleadings. Evidentiary rules--of relevancy, of materiality, of admissibility--frame and filter out the extraneous, the complicating, the human, in short. Legal language flattens and confines in stark absolutes, "making up," says Williams, "its own brand of narrower, simpler but hypnotically powerful rhetorical truths" (10). The richness of existential reality is thus reduced to legal fictions, to "neutral" criteria, to a kind of allegory, really. Indeed, in discussing breach of promise caselaw, solicitor MacColla allegorically labels various plaintiffs: "Martha Graball," "Miss Constance Faithful," "Miss Lovelaw." A similar lawyerly impulse, to mythologize, to invest for rhetorical effect

certain figures with a larger than life, one dimensional symbolic burden, has been glimpsed in the criticisms of breach of promise by Victorian legal periodical commentators: every plaintiff is a monstrous, castrating femme fatale.[8]

I

An 1846 case, Smith v Ferrers, illustrates several rhetorical tactics to confine, to defuse. "One of the most extraordinary cases ever heard," according to the Times, which devoted to it extensive coverage, this four day trial before Justice Wightman and a special jury[9] opened February 14, ironically enough, at the Queen's Bench Division at Westminster Hall (Feb 16, 1846:7).[10] The plaintiff, then just twenty-one, was Mary Elizabeth Smith, the daughter of an Austrey, Warwickshire farmer and "a young lady of great personal attractions," according to her lawyer, Sir Fitzroy Kelly, the Solicitor General (Feb 16, 1846:7). The defendant was twenty-four year old Washington Sewallis Shirley, ninth Earl of Ferrers. He was represented by Sir Frederick Thesiger, then Attorney General, soon to be Baron Chelmsford, Lord Chancellor and Privy Councillor.

According to Smith, who claimed £20,000 in damages, she and Ferrers first met in 1839, when he, then Lord

Tamworth, resided in the Austrey vicinity with his tutor. The two fell in love but were separated for two years while he was abroad and she was away at finishing school. When they were reunited, the wedding date was set but postponed twice. Certain items--books, clothing, a bonnet--were ordered by Smith on the understanding, she said, that Ferrers was to be sent the bills. The wedding cake and dresses had been ordered when Smith learned of Ferrer's marriage to another, Lady Isabella Chichester, daughter of the Marquess of Donegal. Smith's hopes, as Solicitor General Kelly described, "were forever blasted" (Feb 16, 1846:7).

These being pre-Evidence Further Amendment Act days, neither party was entitled to take the stand. Smith's case, therefore, consisted entirely of witnesses--her parents, her thirteen-year-old sister, and a number of rather discreditable townspeople who testified to having seen her and Ferrers walking together--and twelve very lengthy, ungrammatical love letters purportedly written by Ferrers upon an odd assortment of scraps of paper. One dated February, 1844, was typical:

> Dearest Mary, if wishes could transport me to you, there would be no need of this writing...I have seen chairs that I think will do for one of our rooms at Chartley. Won't the old Hall be bright and happy when its future mistress takes possession of it. Pray take every care of yourself, dearest; forget not you are the only hope of one to whom a palace would be but a desert and England no home without you...Mary, you who

> are all in all to me, take care of yourself, and mind when you return from walking you change your shoes. (Burke 489-90)

Elsewhere, she is his "life," his "bird of paradise," his "gleam of sunshine in the dark cloud."

The third day was climactic. "On the doors being opened," reported the Times, "the rush very much resembled the crush at the Opera-house" (Feb 18, 1846:7). Attorney General Thesiger dramatically produced four anonymous letters his client had apparently received over a number of years. Under his rigorous cross-examination, Mrs Smith had admitted the handwriting to be that of her daughter. In one of these letters, dated December 19, 1842, Smith had written:

> My lord, Strange it may seem to you, no doubt, to receive a note from a stranger, and a lady too, but it signifies little to me, as I well know you will never know the writer of this letter, never see her; now for what I have to tell you, it is this: there is a public ball at Tamworth every Christmas, generally about the 6th or 8th of January, go, I advise you, go; there will, to my knowledge, be a young lady at the ball, who I wish you to see and dance with; she is very beautiful, has dark hair and eyes, in short, she is haughty and graceful as a Spaniard, tall and majestic as a Circassian, beautiful as an Italian. I can say no more, you have only to see her to love her; that you must do; she is fit for the bride of a prince. Go, look well round the room, you will find her by this description; she may wear one white rose in her dark hair.... (Burke 501-2)

In another letter, dated months after the time her young sister, Ann, had sworn she had seen Ferrer in the family

drawing room leaning against the mantelpiece, Smith addressed Ferrer as "the one I cannot help but love, though apparently that one a stranger" (Burke 503). "Alas! she sighed, "in secret I write to you, in secret love you; would we could meet" (Burke 504). Kelly promptly withdrew from the case and Smith was nonsuited.

Years later, Thesiger would look fondly back to Smith v Ferrers as his greatest accomplishment. "I believe I may venture to say," he would reminisce, "that I never did anything better than this while I was at the Bar" (qtd. in Frost 288). In a four hour address to the jury that was met with "considerable applause" unchecked by the court, Thesiger revelled in the narrative possibilities presented to expose and expel the threat posed by such a woman as Mary Smith (Feb 18, 1846:8). He presents the damning anonymous letters like a cliffhanger in the latest serialized triple decker. "Let us begin to unravel the mystery," he says, "we are coming now to the third volume" (Burke 500). "Much that had already passed," he submits:

> must have been unintelligible and mysterious...but he would promise them, if they would but restrain their curiosity, that he would explain everything to their entire and perfect satisfaction; he would clear every doubt and difficulty which now appeared to entangle their path.... (Feb 18, 1846:8)

"We are approaching very nearly to the denouement," he tells them (Burke 501).

Like all great cross-examiners, indeed, like Dickens' Serjeant Buzfuz for a more comic effect, Thesiger "pressures" the lawyer's "text," that is, the evidence before the court, to wring from it meaning, legal significance. Like a narrator of "melodramatic imagination," Thesiger pierces textual surfaces, interrogates appearances, to invest the banal, the quotidian, with high drama.[11] He charges his narrative with "intenser significances" to reveal, beneath, a subterranean "cosmic moral drama," an underlying manichaeistic conflict of good and evil (Brooks 2, 41). The law, much like Brooks' notion of melodrama, serves to identify and expel villainy, to enact social purging.

Indeed, according to Brooks, the tribunal, the paradigmatic truth-seeking scene, was a recurring motif in classical French melodrama, that most vital and popular nineteeth-century dramatic form (31). Like legal rhetoric itself, as we have seen, the melodramatic impulse is one of "polarization into moral absolutes" (4). Melodrama is a narrative, argues Brooks, of "virtue misprized and eventually recognized," of the struggle for the sign of virtue (27). To make the world "morally legible" to all, to make enigmatic signs clear, unambiguous and impressive, hyperbolic rhetorical excess --"blasted hopes," "blighted prospects," for instance--is used by melodramatists, as by lawyers. A universe of

"pure signs" is the aim on stage, as it is in the court room (36). Both are all-expressive, all-explicit narrative forums. Smith was Thesiger's rather clever inversion of the melodramatic form: his villainous sexual predator is female; his besieged virgin is male.[12]

Thesiger presents a spectacular special effect that rivals the fires, floods and lightning of such master melodramatists as Pixecourt or Daguerre. Jehovah-like, he creates light. "However dark and mysterious it might appear, he...disperse[s] all the shadows" (Feb 18, 1846:8). Like a CD Act-sanctioned speculum wielder, he probes the dark interiority of a sexually transgressive female to reveal a truly "love sick girl," as he labels Smith (Feb 18, 1846:8). Once again, all is exposed in the harsh "unwinking sun of legal inquiry."

In the kind of moment Brooks sees as characteristic of the melodrama, a "moment of astonishment," of "ethical evidence," Lord Ferrers is recognized as virtue wronged and Mary Smith is stripped bare, Duessa-like, and revealed to be a "vain, imaginative and love sick girl," a madwoman, in short (26). "Artful and ingenious," she demonstrates the duplicity believed to be inherent in the hysteric, that most convenient Victorian diagnostic "peg" (Burke 505). According to alienist Jules Falret, hysterics were "veritable actresses" who "do not know of a greater pleasure than to deceive" (qtd. in Poovey 46).

Thus was Smith defused, "othered" and confined rhetorically, as increasing numbers of Victorian women were, more literally, in the growing number of public insane asylums built following the passage, in 1845, of the Lunatics Act.[13]

Smith became another in a veritable parade of heroines deployed by nineteenth-century art and literature--Ophelia, Elaine, the Lady of Shalott, for instance--maddened by unrequited love, deranged by a frustrated maternal "instinct" to love selflessly. Like the Lady of Shalott, she "weaves by night and day/A magic web," an elaborate romance of clandestine love, an "intricate web," says Thesiger:

> in which, but for the most unexpected and providential circumstances, My Lord Ferrers must have been entangled, and from which he would in vain have attempted to escape. (Burke 505)

Like Tennyson's heroine, too, she is "cursed," cursed by an "unladylike" sexual desire pathologized by the Victorian psychiatric profession.

One unfortunate, apparently disturbed young woman thus came to symbolize for critics of breach of promise a whole host of supposed abuses of the action. She is the black widow, the scheming, perjury-prone "forger" of love letters and snares for unwary men seen over and over again in the pages of Victorian legal periodical literature. Lord Chelmsford, during the debate of the

1869 Evidence Further Amendment Act, surely makes veiled reference to her when he speaks of "cases of this kind" in which breach of promise plaintiffs "would not scruple to support forgery by perjury" (Hansard's July 26, 1869 676). Mythologized, dehumanized, perhaps Smith's sixty-six page pamphlet, A Statement of Facts Respecting the Cause of Smith v Earl Ferrers, published immediately after the trial, was her valiant attempt to "write" herself back into a narrative from which she had been so thoroughly and effectively expunged.[14]

II

A very different case is Finney v Garmoyle, an 1884 breach of promise action brought by Emily May Finney, daughter of a bankrupt coal merchant and protegee of W.S. Gilbert, against the Honourable Arthur William Cairns, the Viscount Garmoyle, eldest surviving son of Lord Cairns, twice Lord Chancellor and intimate of Disraeli.[15] "The most interesting case that, for many years past, has been provided for the delectation of the British public," according to a "gossipy diarist" quoted by Wyndham, the litigants met when Finney, whose stage name was Fortescue, was playing, appropriately enough, the role of Celia, "a peri who marries a peer," in Gilbert and Sullivan's Iolanthe at the newly opened Savoy Theatre

(129, Stedman 72). Garmoyle, who was something of a "swell," it seems, and a frequenter of playhouses, gained her introduction at the home of a mutual acquaintance in the summer of 1882. The following summer, the couple's engagement was publicly announced.

Though Lord Cairns was a pious evangelical, indeed, "the most ostentatiously religious man among the prominent statesmen of the day," according to the Freeman's Journal, Garmoyle's parents approved of the match (qtd. in Stedman 71). On July 18, 1882, Lady Cairns wrote her prospective daughter-in-law:

> Dear Miss Finney--a name by which you will very shortly be no longer known,-- My son has asked me this evening to write to you, as his visit to Switzerland will delay him for some time from seeing you, and I am anxious that he should not hurry back from his father. I trust it will please God to grant His blessing both to him and to you, for experience has taught me that without God's blessing no life can be happy and no good permanent.
>
> I think I have no greater hope than that you and my beloved son will be really happy, and there is a kindly desire to further his and your interests on the part of every member of his family. (Wyndham 132)

Since, however, Garmoyle informed her that his parents "had strong views as to the profession of the stage," regarding it "not only as frivolous, but as sinful and profane," Finney agreed to abandon her career (21 Nov, 1884:4). Everywhere, she was introduced as Garmoyle's fiancee. She visited his family in Scotland; wedding

plans were discussed. The artist James McNeill Whistler even gave one of his famous Sunday breakfasts "in honour of two happy couples, Lord Garmoyle and his fairy queen, and Oscar [Wilde] and the lady whom he has chosen to be the chatelaine of the House Beautiful" (qtd. in Stedman 73).

Though Garmoyle soon returned to Sandhurst to complete his military studies, the couple exchanged letters. In one, dated October 18, 1883, Finney reveals herself to be an intelligent, high-minded pragmatist:

> Dear Old Sweetheart,--I wore your last present at dinner after you left, but I do want you to remember what I say when I beg you not to give me anything else for a long time. Sweetheart, you see besides being loving lad and lassie we are a sensible man and woman, who having found out they care for each other more than for anyone else in the world, have settled to pass their lives together. For this to be successful the man must not be in the habit of thinking the woman a pretty plaything on whom jewels and toys are to be lavished, and that these things make her happiness. Now, dear old boy, we must face the fact that you have heavy expenses, and many of them, and, therefore, you cannot put your income round my neck and arms without getting your affairs into a muddle somehow...You see I am not simply a brainless doll whose spurious kind of love ...needs to be kept aflame by all sorts of appeals to her vanity as her strongest point, but a deeply loving woman...Do you know, old boy, you and I owe something to other people. By that I mean that, as we have done something a little out of the way, we are bound to make it a great success for each other, so that other men and women in, perhaps, somewhat similar positions may say, 'These two took their lives into their own keeping, and faced many things for the sake of being together. They made a success of it, and so will we try

....' (21 Nov, 1884:4)

Abruptly, after a Christmas visit with her and her mother in Brighton, while "professions of affection and regard" were "yet warm on his lips," to quote the Times, Garmoyle broke the eight-month engagement by letter, claiming that:

> looking to her profession, she would not be received by his friends and relations, and that...acting upon the suggestion of others, he must break off the engagment so seriously and solemnly entered into and up to that moment regarded as sacred and binding. (4)

Though Lord Cairns attempted repeatedly to settle the matter discreetly, out of court, offering her first £2,000, then £3,000, Finney v Garmoyle was on the cause list by March 22, 1884. Claiming £30,000 in damages, Finney promptly returned to the stage, to the Court Theatre, ironically.

Once it became apparent she would not "suffer and be still," would not passively submit to metaphoric suttee, Finney was subjected to an all-out journalistic moral campaign to shame her, to "other" her, to eject her, even, from a profession most eager to consolidate respectability. Theatrical journals that burst into jubilant congratulatory verse upon the announcement of her engagement to Garmoyle, journals such as the comic weekly Moonshine, that celebrated her acceptance of "one of the right sort," not a "Gilbertian Earl of air," now

vigorously attacked her "unwomanly" assertion of rights (qtd. in Stedman 72). Once "the beautiful Miss Fortescue," "efficient, fascinating and particularly pleasing in pose and demeanour," Finney now received lukewarm reviews at best (qtd. in Stedman 70). As Dorothy in the revival of Gilbert's serious drama Dan'l Druce, for example, Finney was said to be overtrained and "puppetlike." "What would not many a hard-working and meritorious young artist have given," the weekly theatrical, Era, complained:

> for the opportunity now offered (and offered, as far as any artistic achievement goes, in vain) to Miss Fortescue! (qtd. in Stedman 82)

"We should have been sorry," was the waspish conclusion, "to have seen an actress in the real sense of the word bring such an action" (qtd. in Stedman 85). Instantaneously, she was metamorphosed from ingenue to hussy.

Finney was criticized, unfairly, for capitalizing on her new found notoriety. Often, parallels were drawn to the notorious Lily Langtry, society beauty and royal mistress turned actress, who had drawn audiences but had hardly enhanced the reputation of the stage. According to Era, Finney was "another illustration of the fact that a little notoriety, from the commercial point of view, is to be preferred to talent." "We are inclined sorrowfully to admit now," it was concluded:

> that, so far as the stage is concerned, notoriety is better than brains, and to be plaintiff in an action for breach of promise of marriage more value than artistic excellence. (qtd. in Stedman 81)

Gilbert, himself at one time a practising barrister, was prompted to respond with an angry letter explaining that Finney was earning "an equivalent of the salary she was receiving when she left the Savoy," that is, a mere six guineas per week (qtd. in Wyndham 138).

Finney's assertiveness paralleled that of the "strong minded" New Woman, that fearful emergent species who was also then daring to claim public privileges--education, employment, the vote--for herself. According to Stedman, Finney v Garmoyle was parodied in a gender-role-inverting one-act burlesque entitled Posterity; An Operatic Andissipation set in a futuristic England of women who work and rule and men who are insipid tea drinkers. Certainly, Era seems to have engaged in the kind of cruel denigration of Finney's "feminine charms" typically aimed at "Amazonian" female suffrage activists when it reviewed the exhibition of her portrait by Weedon Grossmith at the Royal Academy. "There can be very little doubt," the weekly wrote, "that Miss Fortescue has a high estimate of her own attractions, which are greatly flattered by the complimentary artist" (qtd. in Stedman 84). "When a woman brings an action of this sort," it was observed here, as it was so often by the legal

profession, "she places herself beyond the pale of delicacy and sympathy" (qtd. in Stedman 84). Defiant of notions of "essential" femininity--modesty, passivity, dependency, for example--Finney is "masculinized."

In Finney v Garmoyle, Lord Cairns' son was not the only defendant. On trial, as well, was the respectability of the acting profession. At a time in which the press was pleased to note that actors and actresses were "no longer social ciphers," at a time when there were no fewer than nineteen marriages between actresses and various members of the English nobility, the status of the stage as a profession for women was in fact hotly debated (21 Nov, 1884:9, Kent 115). Of course, women's employment was, for Victorians, always an ideologically eruptive site, destabilizing of notions of woman's selfless maternal "nature" fundamental to both the preservation of bourgeois morality and commercial productivity. However, as the stage became, in the years between 1861 and 1871, particularly, a not insignificant employer of the "redundant" middle-class woman,[16] the actress began to take on the kind of heavy symbolic burden Poovey has noted of the governess. As a wage-earning middle-class woman, she, like the governess, subverted notions of separate classes as well as separate spheres. As daughters of middle-class men fallen victim to the vagaries of the industrial economy, both came to

epitomize the often cruel toll of capitalist market relations.[17] Like the governess, issues of social incongruity and sexual susceptibility intersect upon her.

F.C. Burnand, editor of Punch, published no fewer than three articles between 1882 and 1885 in which he refutes the professional status of the stage and criticizes the theatre as detrimental to female morality.[18] Addressing the mothers of England, nurturers of social stability, he asks, "would any [of them]...wish [their] daughters to go on the stage?" ("Behind" 89). "If your well-brought-up daughter does go there," he warns:

> one of two things will happen,--she will be either so thoroughly disgusted at all she hears and sees that she will never go near the place after the first week, or she will unconsciously deteriorate in tone, until the fixed lines of the moral boundary have become blurred and faint. If among these surroundings a girl remain pure in heart, it is simply nothing short of a miracle of grace. ("Behind" 90)

Unchaperoned touring and exposure to "forcible language" were particularly problematic, it seems, especially for the impulsive, intractable young woman of "artistic temperament" ("Behind" 91, 92).

Indeed, Davis notes a persistent popular equation of Victorian actresses and prostitution.[19] Like prostitutes, actresses were financially independent, nocturnally active public women. Often similarly clothed, both were objects of male desire within

geographic propinquity of each other, interdependently "excit[ing] and placat[ing] the playgoer's lust," explains Davis, "in an eternal loop, twisted like a Mobius strip into the appearance of a single surface" ("Actresses" 221). Both, like the breach of promise plaintiff, pierce the Victorian purdah to be sexually appraised and commodified by a public, male gaze. As both actress and plaintiff, Finney was doubly subversive, doubly threatening.

The "Comedy-Tragedy of Finney v Garmoyle," according to Punch's "Hack Dramatic Critic," had a certain "indescribable flatness" ("New"). Though Pump Court had speculated months earlier that the "ghouls of society" might be cheated by a default judgement, the case was indeed heard, albeit in rather procedurally unorthodox fashion, before Justice Manisty and a crowd "resembling a first night's gathering at a leading theatre" on November 20, 1884 ("New").[20] No witnesses were called; neither party took the stand. In fact, Garmoyle was not present. After some perfunctory remarks by Finney's counsel, Charles Russell, Garmoyle's lawyer, Sir Henry James, Attorney General at the time, presented Garmoyle's prepared statement as Finney, nonchalant, read a novel. "I wish at once," he told the jury:

> on behalf of Lord Garmoyle, to make a statement to you which will relieve you of the duty of trying this case...I wish at once to say that, while many persons

> would shrink from bringing an action for breach of promise of marriage, there are considerations in this case which would seem to justify Miss Finney in having sued for a money compensation, and that though Lord Garmoyle has always offered and been desirous that she should receive it, there may be reasons which would justify her in having brought an action and also in desiring that it should be heard and determined in public. (4)

On his client's behalf, James consented to a judgement of £10,000, at that time the largest award of its kind. "But I wish to go further," he continued:

> for Lord Garmoyle desires that it should be said that from his past acquaintance with Miss Finney, and throughout the whole of his engagement with her, from its inception to its termination, there was nothing in her conduct which was unbecoming a high-minded English gentlewoman. (4)

Like some present day public relations wizard, Finney orchestrated her own public vindication. In the most "masculine" of public arenas, she exploited the most patriarchal of legal narratives--a narrative of female victimhood, of female dependency, of commodifiable female chastity--for her own ends. Declining the role of passive victim, she defied gravity: she refused to "fall." For her, the probing public gaze proved salutary, cleansing. Miraculously, she was redeemed. Appropriately enough, she would later give paid testimonials for Pear's Soap. Hers is an empowering action.

With the damages, Finney assembled her own touring

company, touring the provinces, America, even South Africa. She went on to play a number of roles--Galatea, Lady Teazle, Rosalind, for example--garnering better and better reviews. Her delivery of Hypatia's dying speech apparently "brought down the house in Sheffield" (Stedman 91). She became a competent manager, eventually even conducting her own rehearsals. She never married, but was always the model of propriety.

Of course, Finney v Garmoyle was an anomaly. Most breach of promise plaintiffs, surely, imbibed the narrative dictates of the legal "script," assimilated the role of dependent "fallen" victim imposed by the cause of action. Yet Coombs notes the complicated paradox: litigation is inherently courageous, empowering. "To file a suit," she points out:

> is to say, first, I will not accept the harm done to me as something natural and unchangeable; and, second, I will take action to reallocate responsibility to those who caused that harm. (18)

Finney v Garmoyle, like Smith v Ferrers, demonstrates what shall be further explored: breach of promise to marry could be a most versatile narrative.

1.Frost finds at least two Victorian dramatizations--one by J. Hollingshead, another by William Barrymore--of the trial of Bardell v Pickwick, taken from Chapter 34 of the Pickwick Papers (1836-7) (394).

2.See Chapter One, note 10.

3.MacColla's Breach of Promise was in fact dedicated to Herschell, "to illustrate the true phases of A GREAT SOCIAL QUESTION which, in his zeal for the welfare of our country, he has so ably shown to the House of Commons."

4.See Poovey, Uneven.

5.See Tanner.

6.The law requires consideration, the element of mutual exchange or bargain, as a prerequisite to an enforceable contract (except, that is, where a promise has been made in a document under seal). Osborn's Concise Law Dictionary defines consideration as follows:

> A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss of responsibility given, suffered or undertaken by the other.

7.For the dangers of imposing such a private law, contract analysis on public law interests, such as constitutional and race issues, see Williams. "Market theory," says Williams, "always takes attention away from the full range of human potential in its pursuit of a divinely willed, rationally inspired, invisibly handed economic actor" (220).

8.This "mythologizing" rhetorical tactic is familiar to readers of caselaw. "Slippery slopes" and "floodgates" metaphors are cliched examples.

9.Special juries were frequent in breach of promise trials. Abolished in England since 1949, a special jury was one drawn from a panel of persons with a higher property qualification than common jurors. Accusations of their corruption and abuse inspired an 1867 Select Committee of the House of Commons and an 1821 tract, The Elements of the Art of Packing; as Applied to Special Juries by none other than Jeremy Bentham. See Oldham.

10.Dickens, of course, had his Bardell v Pickwick heard Valentine's Day, too.

11.See Brooks.

12.The potential for drama inherent in the breach of promise scenario was not lost on MacColla, either. He coaches plaintiffs "deficient in beauty" to enter the court room well veiled and "in a drooping state" to optimize dramatic effect (60). "The legal aspect of the case," he insists, "would be eclipsed by the poetry of the scene" (60).

13.A statistically verifiable "feminization" of madness took place following the passage of the 1845 Lunatics Act, which required all counties to provide adequate asylum accomodations for pauper lunatics. Because the poor were more likely to be certified as insane, and because women were more likely to be poor, there was an enormous increase in the female asylum population. According to the 1871 census, for example, there were 1,182 female lunatics for every 1,000 males (Showalter, "Victorian Women and Insanity" 315-16).

14.Unfortunately, Smith's pamphlet, published by John Ollivier in 1846, is unavailable. According to Frost, however, the pamphlet was so harshly reviewed by the Britannia, that Smith once again litigated, this time winning a mere farthing in damages in libel against the magazine (286).

15.Garmoyle's father, Lord Cairns, had been involved in the passage of the 1869 Evidence Amendment Act and, more recently, the Married Women's Property Act of 1882.

16.According to Davis, between 1861 and 1871, the number of actresses registered on the census increased by ninety percent ("Does" 44). With a new, affluent audience and the development of the so-called "cup and saucer" domestic drama of the 1860's, the perceived gentility and refinement of middle-class actresses were especially in demand.

17.Finney herself, of course, was the daughter of a bankrupted coal merchant once of the firm of Finney, Seal and Company.

18.See Burnand, "Behind," "Councils" and "A School."

19. See "Actresses" and "The Actress." In fact, according to Davis, there are few documented cases of Victorian women simultaneously pursuing careers in prostitution and the theatre. If discovered, she says, immediate dismissal from the company would result ("Actresses" 223).

20. Ironically, at the time of the trial, a revival of Gilbert and Sullivan's Trial By Jury was playing at the Savoy Theatre. At the Novelty, a domestic drama entitled Lottie, featuring an actress who marries a baronet, played.

CHAPTER THREE

> A removal of superfluous numbers, in whatever rank, cannot fail gradually and indirectly to afford relief to the whole body corporate, --just as bleeding in the foot will relieve the head or the heart from distressing and perilous congestion. (Greg "Why" 63-64)

Greg's "prescription," to "bleed" a body politic "congested" with spinsters, potential breach of promise plaintiffs every one, invokes a two-millenia old metaphor.[1] Elsewhere, tenor and vehicle are inverted: diseased bodies signify a diseased society. In "Prostitution," for example, the same social reformer likens statesmen inattentive to "the Great Social Evil," that "hideous gangrene," to timid patients "who, fearing and feeling the existence of a terrible disease, dare not examine its symptoms or probe its depth" (474, 448). George Eliot and Elizabeth Gaskell go further. In Adam Bede and Mary Barton, the sexualized and, therefore, pathological female body is the site at which the social contract itself is breached and ultimately renegotiated.[2] Private wrongs actionable in breach of promise to marry become here analogues of other lapses of the ruling

class. One "constitution" thus stands in for and finally serves to amend another.

The two novels, early forays by their authors into the promiscuous gaze of the publishing marketplace, explore many of the anxieties--female immodesty, encroaching commercialism, the "nature" of woman, for instance--that erupt in the breach of promise controversy. Both give us temporarily "public women" who figure the schizophrenia mid-Victorian ideology imposed upon breach of promise plaintiffs as well as women writers: simultaneous modesty and ambition, audacity and self-effacement. In climactic courtroom scenes, both novels probe "fallen," or at least "falling," womanhood.

I

Seduction is inherently power-imbued, perhaps inherently political. Long before the evangelically inspired mid-Victorian "magdalen fever" constructed the "fallen" woman as a sympathetic symbol of economic and sexual exploitation, seductions of working-class maidens by upper-class libertines were a cliche of social protest writings (qtd. in Trudgill 268).[3] In the radical literature of the Jacobins of the 1790's, in the propaganda of Chartists, New Poor Law protesters and CD Acts repealers, Old Corruption was given a predatory,

leering face. "This image of seduction," observes Clark:

> imbued fiction with a political content linking the reader to larger struggles, and inspired the public rhetoric of class struggle with personal, emotional images of oppression. (48)

Mary Barton's romantic tribulations, therefore, "far from constituting a 'diversion' from the more serious, socially critical plot," as Schor remarks, "both echo the questions of the more explicitly political novel, and question the politics of the heroine's story" (15).[4] In Mary Barton, in short, that most personal is most political.

As a seamstress, Mary is an especially pitiable symbol for mid-Victorians of those doubly exploitable under industrial capitalism. She is one of "fashion's slaves" immortalized by Richard Redgrave and Thomas Hood, victim of an inhumane "sweat system" beyond the reach of protective legislation and vulnerable, because susceptible to a "love of finery" medical and political discourses constructed as a chief cause of prostitution, to seduction.[5] In "Prostitution," his plea for sympathy for the "fallen," Greg cites numerous examples taken from Mayhew of desperate needlewomen driven by exploitative wages "to the streets." Sure enough, we learn, it was one "hot summer evening, when, worn out by stitching and sewing, [that Mary]...loitered homewards with weary languour, and first listened to the voice of the tempter"

(183).

Mary's rash rejection of Jem Wilson, her breach of their implied contract to marry, is the sexual analogue of her father's more drastic, murderous breach of the social contract itself, that binding exchange of reciprocal responsibilities constitutive of the body politic. Both acts disrupt established order and reinstate a kind of pre-contractual "state of nature," device of social contract theorists, to reveal essential truths. Mary's vision is epiphanic and apocalyptic: "life would be hereafter dreary and blank" (152). Her "psychic revolution," to quote Yeazell, brings revelation (136). "It...unveil[s] her heart to her; it "discover[s] the passionate secret of her soul" (152).

A breach of promise, ironically, is this heroine's moral salvation. The scene anticipates that captured by the Pre-Raphaelite William Holman Hunt, in his 1853 painting, "The Awakening Conscience," in which a similarly "falling" woman, startled, defies gravity to arrest herself in mid-tumble.[6] Without the assistance of Esther, her spectral "fallen" double and guardian angel, without the aid of any of the numerous magdalen rescue societies founded in the mid-nineteenth century,[7] Mary refutes the inevitability of that swift "downward progress" into prostitution, alcoholism and death Victorian orthodoxy envisioned (Greg "Prostitution" 452).

"She had hitherto been walking in grope-light towards a precipice," we are told:

> but in the clear revelation of that past hour, she saw her danger, and turned away resolutely, and for ever. (153)

Gaskell invokes the language of contract to parody, to show up the absurdities, of certain premises of classical contract theory, as well as breach of promise law. She is as loathe as the dissent in Hall v Wright to equate sexual relationships with bargains for, say, horses or bales of goods.[8] Mary Barton becomes, in effect, a critique of rampant commercialization and private contract analyses that would posit equality of bargaining power between master and worker, man and woman. Henry Carson, the self-interested, invisibly handed homo economicus of classical contract theory, a man who "would obtain [Mary] as cheaply as he could," caricatures her, just as he does the union delegates at the bargaining table (157). For him, this starving, utterly powerless adolescent, for whom legal language is a "many-syllabled mystery," is a "witch," a "sweet little coquette" and a dickering "equivicator" of "terms" (291, 158).

The violence latent in such unchecked, self-seeking bargaining becomes apparent. Carson hires a procuress, becomes Mary's "persecuting lover" and finally resorts to "unmanly force" (183). "From blandishments," we learn,

"he had even gone to threats--threats that whether she would or not she should be his" (204). Only his premature death, surely, saves Mary from rape. Like the mill owners, Carson fails to bargain in good faith, not for the "hands" of alienated workmen, but for Mary's stock in trade, her genitalia, the subject of this negotiated sexual contract.

His insulting marriage proposal, a kind of eleventh hour "concession," reveals the complete lack of consensus ad idem, the requisite "meeting of minds" that consummates a binding contract, between these two "parties:"

> I only want now to tell you how much I love you, by what I am ready to give up for you. You know (or perhaps you are not fully aware) how little my father and mother would like me to marry you. So angry would they be, and so much ridicule should I have to brave, that of course I have never thought of it till now. I thought we could be happy enough without marriage ...But now, if you like, I'll get a licence to-morrow morning--nay, to-night, and I'll marry you in defiance of all the world, rather than give you up. (159-60)

In her naivety, Mary has construed "indicia"--flowers, letters, intimate walks--as a court hearing a breach of promise case would, as a de facto engagement. Significantly, she is conversant, as is Jem, in Van Zyl's middle-class "key" to male-female relationships.[9] Carson, this Prince Hal, this heir apparent of a merchant

prince, is revealed to be a "plotter" intent on "ruin[ing] a poor girl," a vestige of aristocratic libertinism (160, 161). "My father," he confides, "would have forgiven any temporary connexion, far sooner than my marrying one so far beneath me in rank" (161). His "attachment [is] of that low, despicable kind" (160).

Gaskell situates her heroine as the law did breach of promise plaintiffs, under oath, before an all-male judge and jury, to denounce conclusive labellings of woman's "nature." Jem's murder trial becomes a condemnation of an ideology that would "tag" transgressive women irrefutably, like so many entomological specimens, "fallen" Butterflies. Like one of Job Legh's creatures impaled upon a corking-pin, Mary's "genus" is scrutinized. Her "giddiness," her flirtatious mermaid-like conduct, is "probed" by the "unwinking sun of legal inquiry," by the impudent questions of a "pert young barrister:"

> And pray, may I ask, which was the favoured lover? You say you knew both these young men. Which was the favoured lover? Which did you prefer? (382)

For Mary, as for Emily May Finney, the court room proves redemptive, empowering.[10]

Like Hester Prynne atop her "pedestal" of shame, Mary is at once majestic and humbled, heroic and debased, as she "own[s] her fault" in the witness-cum-confession

box (382). Willingly, even defiantly, she brings "her heart's secrets" into glaring discursive existence before authoritative "masters of truth:"[11]

> He asks me which of them two I liked best. Perhaps I liked Mr Harry Carson once--I don't know--I've forgotten; but I loved James Wilson, that's now on trial, above what tongue can tell--above all else on earth put together; and I love him now better than ever, though he has never known a word of it till this minute. (382-3)

Freedom from inhibiting "maidenly modesty" is welcomed: "there [is]...no feminine shame to stand between her and her avowal" (382). Setting aside gendered notions of propriety fosters understanding here, as it does when the elder Carson "la[ys] bare" his parental grief before John Barton, thus enabling the eventual negotiation of a new social contract, the <u>lex loci</u> of which,[12] as it were, is the "Spirit of Christ," not the invisible hand (448, 458).

At first allusive and elusive, likened to an engraving of a portrait by Guido and "some wild sad melody heard in childhood," Mary's dangerously sexual body becomes in the witness box a site of atonement (381).[13] Her "light conduct" is expiated corporally, in a kind of metaphoric blood-letting: "burning scarlet blushes" that "dye her fingers" (268, 383). The scene is comparable to another episode in Gaskell of heroic, temporary emergence by woman into the public arena,

Margaret Hale's apocalyptic, "angel out of the house" intercession in North and South, in which a stigmata-like "blood flowing" before the "unwinking glare of many eyes" dissipates the violence of a bestial, rioting mob (180, 192). Both heroines do "some good...[by] disgracing [themselves]" publicly (North 190).[14]

The strain, however, is debilitating, maddening. To "own her love," yet not implicate her father, Mary must be at once forward and reticent, diffident and candid (382). She thus becomes representative of the kind of schizophrenia imposed upon all public speaking women--novelists as well breach of promise plaintiffs--by a mid-Victorian ideology that figured as oxymoronic feminine publicity. Gaskell's own internalized ambivalence is evidenced by her keen concern, on the one hand, with such publishing pragmatics as release dates and remuneration and, on the other, an almost morbid dread of notoriety. According to Gerin, Gaskell "took refuge in flight" after each publication and once, abashed over breakfast at a reference to Mary Barton, she "popped down under the table," thus retreating, says Schor, from her own "unwomanly" boldness (90, 94). Anonymity, like Mary's expiatory blush, insured "maidenly modesty" in promiscuous publicity.[15]

Mary's symptoms are, indeed, the visual and auditory hallucinations of schizophrenia:

> They were all at sea, sailing away
> on billowy waves, and everyone speaking
> at once, and no one heeding her father,
> who was calling on them to be silent,
> and listen to him. (385)

Her delirium is baptismal, a temporary rebirth into pre-sexual, pre-lapsarian infancy. Until another blush, of "the brightest rosy red," signals her "fall" once more into knowledge, into "maidenly modesty," "she smile[s] gently," uninhibitedly, at a maternal Jem, "as a baby does when it sees its mother tending its little cot" (410). She is Eve redeemed, worthy of Gaskell's middle-class Eden.

The work of cultural anthropologist Victor Turner on rituals of liminality, institutional rites de passage, proves instructive here. Mary's delirium resembles Turner's "betwixt-and-between" liminal state, a symbolic counter-realm outside law, custom and social structure akin, it would seem, to the "state of nature" hypothesized by classical social contractarians and evocative of "communitas," that is, unmediated, "essential" intimacy (232). Like a liminal passenger, a humbled and passive Mary is detached from the structural domain, shares a role-transcendent "communal drama," and is finally reinscribed, at an enhanced status, into the social structure (Gilead 184). Afterwards, she is "softer and gentler," we are told, her dangerously marketable, fetishized "golden" hair dimmed (412).

Purged of all "giddiness," she "would fain be at home" (413). She has become the thoroughly domesticated Angel in the House, "fondly restrain[ed]" by Jem when she wishes to search for Esther, her legal personhood, even, "covert" as his wife (460).[16]

Thus Mary Barton reproduces the paradoxical underpinnings of the very ideology Gaskell invokes to authorize her art, a domestic ideology of simultaneous association and disassociation of private and public spheres. Gaskell sanctions her own public activity as she does her heroine's, as a selfless emergency measure, a giving "utterance to the agony...convuls[ing]...dumb people" (xxxvi). The female publicity advocated in Mary Barton rights the wrongs of a fallible legal system, challenges socially ascribed "tags," and fosters gender-transcendent communication, but is necessarily temporary and traumatic: contamination from without must be forestalled. Not surprisingly, as she later confided, Gaskell was "almost frightened at [her] own action in writing it" (Letters 67).

II

"I have had the greatest compliment paid me I ever had in my life," Gaskell wrote Eliot in 1859, "I have been suspected of having written 'Adam Bede'" (Letters

431). Acknowledging an "affinity of feeling" with Gaskell "towards Life and Art," Eliot responded:

> Going up the Rhine one dim wet day in the spring...when I was writing "Adam Bede," I satisfied myself for the lack of a prospect by reading over again those earlier chapters of "Mary Barton." (George Eliot Letters 3: 98-99)[17]

Like Gaskell's, Eliot's first novel posits the sexualized female body as the site of a socially transformative breach of promise and subjects the stigmatized "public woman" to inquisitorial, even juridical, scrutiny.

According to Bodenheimer, Dinah Morris is one of a career-long series of female performing figures, most often singers, upon whom Eliot projected a "complicated sense of ambition and audience," the ambivalent internalization of a cultural ban upon female personal exhibition that drove the novelist to adopt a reclusive lifestyle as well as a male pseudonym (11). As, perhaps, blind Margaret Legh is for Gaskell, Dinah is Eliot's "wishful erasure" of self-display in publicity (Bodenheimer 19). Asexual or, more accurately, pre-sexual, like the delirious Mary Barton, this "little boy," this "boyish chorister," seemingly lacks all female secondary sex characteristics, including self-conscious "maidenly modesty" (66, 71). Atop a cart in the village green, bonnet-less, glove-less, she disrupts the orthodox equation of female physical conspicuousness and

immodesty. Similarly posed, Hester Prynne's "fall" is apparent.[18] Dinah, in contrast, is unimpeachable under repeated examination. Obliviousness to the promiscuous gaze apparently precludes compromise by it.[19]

The gaze of Mr Irwine, magistrate as well as clergyman, is juridical. Rather like a cross-examining defence counsel, he interrogates "the little Methodist": "But tell me the circumstances--just how it was, the very day you began to preach" (106, 135). "And you never feel any embarrassment," he presses:

> from the sense of your youth--that
> you are a lovely young woman upon whom
> men's eyes are fixed? (136)

"I was quite drawn out to speak to him," Dinah later tells Mrs Poyser, "I hardly know how" (139).

Dinah's responses, like those wrung from a breach of promise plaintiff in the witness box, bring into discursive existence physical intimacies, an intense, erotically experienced Divine Love, before an authoritative, male interlocutor. She describes an almost sexual penetration:

> I felt a great movement in my soul,
> and I trembled as if I was shaken by
> a strong spirit entering into my
> weak body. (136)

Hers is a God of "enclos[ing] Divine Presence," of "everlasting arms," barely distinguishable from Hetty's sexual fantasies of penetrating "bright, soft glances" and "invisible looks and impalpable hands" (202, 135,

145, 146).

Another examination is probing, speculum-like, really. Dinah responds to Adam's "concentrated, examining glance" physically, even sexually, as critics of the CD Acts believed suspected "common prostitutes" did to the state-sanctioned "steel penis" (162).[20] Adam's scrutiny is the kind of "undue familiarity" that, Greg insists, excites the otherwise "dormant" desire of woman ("Prostitution" 457). Dinah's initiation into sexual awareness, "maidenly modesty," is induced: "A faint blush came, which deepened as she wondered at it" (162). The blush, her first, is pubescent, a kind of menarche. "It [is] a flush no deeper than the petal of a monthly rose," we are later told (522 emphasis added). Indeed, its effect seems as enervating as Victorian medical men such as Edward H. Clarke believed menstruation to be.[21] "It is but a divided life I live without you," the once autonomous, doubly working woman will tell Adam (576). Only with him, now, does she "have the strength to bear and do our heavenly Father's will" (576). Once as chaste, as sterile, as her home, Snowfield in Stonyshire, would suggest, she is thus made procreative, womanly.

Like Mary Barton, Dinah is a "public woman" only temporarily. Paradoxically, once "modest," her body is "immodest" in public. The epilogue finds her

domesticated, like Mary Barton, feme covert of an intensively gendered, middle-class utopia, her manner eerily reminiscent of the doting Lisbeth Bede's.[22] She is, Adam explains, to be an "example o' submitting" to less talented public speaking women, those who "do more harm nor good," as Eliot herself was not, despite nagging fears she encouraged mediocre women's writing with her own (583 Bodenheimer 21).[23] In a sense, however, Eliot confines Dinah long before the novel's conclusion, safely confines her rhetorically as extraordinary and, therefore, not representative of the capacities of women generally, not subversive of essentialist notions of woman, much as, Beer contends, Eliot willingly confined herself in later years, a sibyl remote from the commercial publishing world (George 26). Eliot restricted herself, as she does her heroine, to "talking to the people a bit in their houses" (583).

Scrutiny is necessary, it seems. Dinah is an "open book," but Hetty Sorrel is syntactically intricate, resistant to "hasty reading" (198). She, not Dinah, performs. At her eroticized work in the dairy, she postures as shamelessly as a chorus girl before her appreciative male audience. In another scene surely paradigmatic of a fundamental mid-Victorian anxiety, she "plays" Dinah:

> The little minx had found a black gown of her aunt's, and pinned it

> close round her neck to look like Dinah's, had made her hair as flat as she could, and had tied on one of Dinah's high-crowned borderless net-caps. (273)

Like Gaskell's "fallen" Esther, who doffs her tell-tale "finery" to masquerade as a virtuous housewife, Hetty effortlessly acts the part of angel. The otherwise imperturbable Mrs Poyser, to whose "feminine eye" Hetty's "nature" is legible, "stare[s] and start[s] like a ghost-seer" (200, 273).

Likened, ironically, to nature's "young frisking things"--kittens, ducklings, calves and so forth--Hetty in fact lacks that assumed by mid-Victorians to be the very "nature" of woman: maternal "instinct" (128). According to nineteenth-century physician and political writer Peter Gaskell:

> Love of helpless infancy--attention to its wants, its sufferings, and its unintelligible happiness, seem to form the very well-spring of woman's heart... A woman, if removed from all intercourse, all knowledge of her sex and its attributes, from the very hour of her birth, would, should she herself become a mother in the wilderness, lavish as much tenderness upon her babe, cherish it as fondly...sacrifice her personal comfort, with as much ardour, as much devotedness, as the most refined, fastidious, and intellectual mother, placed in the very centre of civilized society. (qtd. in Poovey 7)

"In the wilderness," taken for a "wild woman...trapesin' about the fields," Hetty commits a crime, then, that designates her non-woman, aberrant, the Other to be

jettisoned from the closed system that is Hayslope (434). Metaphorically, she is womb-less: "a cherry wi' a hard stone inside it" (385). She is as monstrous, in her own way, as a Becky Sharp or a Bertha Rochester. Significantly, she is skilled at butter-making because of "a cool hand" (201).

Eliot, "fallen" herself, interestingly,[24] quite self-consciously demonizes to displace the "fallen" woman, much as the period's legally and medically constructed "infanticide panic" did. The nineteenth-century agitation for legislative reform that culminated, in 1872, in a panoptical Infant Life Protection Act, similarly presumed every unwed mother to be a crazed murderess, but ignored her difficult plight.[25] Almost as if to undercut her own rhetorical tactic, however, Eliot has the satirically drawn misogynist, Bartle Massey, explicate:

> For as for that bit o' pink-and-white
> they've taken the trouble to put in jail,
> I don't value her a rotten nut--not a
> rotten nut--only for the harm or good that
> may come out of her to an honest man....
> (462)

Thus are Hetty's "blighted prospects and wounded feelings," actionable in breach of promise, intentionally discounted to foreground Adam's. It is he who is cast as pitiable plaintiff, "feminized," or at least "softened," as male breach of promise plaintiffs inevitably were. "All his jealousy and sense of <u>personal</u>

injury...leap...up and master...him" when he interrupts Arthur and Hetty's affectionate leave-taking (345 emphasis added). He is "robbed of Hetty--robbed treacherously by the man in whom he had trusted," a cuckold, really, though he has yet to marry Hetty, yet to acquire title to her body (345). Another notorious cause of action of the period legally entrenched such a homosocial "triangular traffic in women," to quote Sedgwick (159). The action for criminal conversation ("crim. con.") entitled a husband to sue his wife's lover for compensatory damages, for loss of honour and consortium.[26]

Hetty's seduction is a breach of promise in more ways than one. Arthur betrays the millenial hopes of an entire community. Penetration of Hetty's body is atavistic, a hearkening back to feudal droits du seigneur, an abuse of aristocratic privilege analogous to the short-sighted Squire's unconscionable bargaining with the Poysers', his irresponsible superintendence of the old woods. Ruptured with Hetty's hymen is the very social contract, the politically constitutive pact of reciprocal obligation Adam rescinds altogether with his insurrectionary blow, renegotiates finally with his handshake. The novel culminates in this "gentlemen's agreement," an "historical moment of class foundation," says Sedgwick:

> a tableau of bonding, in which an aristocratic male hands over his moral authority to a newly bourgeois male, over the sexually discredited body of a woman. (156)

For Eliot, as for the contemporary feminist social contractarian Carole Pateman, the social contract is fraternal, an all-male covenant to which women are subject, but lack privity.[27] Like James II, whose own abuse of prerogative moved a unanimous House of Commons to resolve he had "breached the original contract between King and people," Arthur agrees to exile himself in France, leaving a responsible "William and Mary" to preside over an amended constitution (qtd. in Atiyah).[28]

Hetty's is a fortunate fall, then, a felix culpa. The court room here, as in Mary Barton, is purging, not of Hetty's irredeemably polluted body, but of the body politic of Hayslope. Amidst gothic trappings of a feudal past--armour, tapestries, stained glass--Hetty is ejected, excised like a vestigial organ, an appendix or wisdom tooth. In Adam Bede, as in Smith v Ferrers, the law exposes to expel that which is ideologically disruptive. In the "unwinking sun of legal inquiry," Hetty, like breach of promise plaintiff Mary Smith, is stripped bare, Duessa-like, before a promiscuous gaze: "she look[s] as if some demon had cast a blighting glance upon her [and] withered up the woman's soul in her" (477). In a melodramatic "moment of astonishment," of

"ethical evidence," the alien "nature" of this syntactical enigma is deciphered, made "morally legible," to all (Brooks 26, 42). Her lawyer's attempts under cross-examination to elicit any evidence whatsoever of "maternal affection" prove unsuccessful (479). She is seen to be a "hard-looking culprit," an inhuman "statue" (479, 481).[29]

Of course, in another sense, the "trial" is Adam's, "the supreme moment of his suffering" (481). His is the anxiety of a culture founded upon a benevolent maternal "instinct:" "I <u>can't</u> bear it...it's too hard to think she's wicked" (455). The ordeal, we are told, is a "baptism, a regeneration, the initiation into a new state" (471). Like Mary Barton's, Adam's evolution requires a symbolic extracontractual liminal period, a revelatory and corporally inscribing "state of nature." In his Stoniton room, a kind of initiation lodge, he is detached from the structural domain, shares with Bartle Massey a fraternal "communitas," and is finally socially reinscribed, paler, wasted, but at an economically and spiritually enhanced status. As Hetty is dehumanized, he is humanized, made a worthy Adam for Dinah, Eve of a new Eden.

It is Dinah who is able to induce from the obstinate Hetty a confession. In a scene Eliot considered the very "germ" of her novel, indeed, "the <u>climax</u> towards which

[she] worked,"[30] Dinah invokes, not the "unwinking sun of legal inquiry," but a Divine Light, to "pierce the darkness," to probe Hetty's murky interiority, to plead her "case" before a heavenly tribunal (497). "I will speak," Hetty finally yields, "I will tell...I won't hide it anymore" (497). Yet again woman is subjected to judgmental "masters of truth": Dinah, repository of all virtues middle-class, and Eliot's "public," her readership, a gaze at once promiscuous and intimate.

Ironically, she is impenetrable: her "poor soul" remains "very dark" (502). As has been seen, Eliot, like Gaskell, posits woman's otherwise all too penetrable body as a locus of socially transformative breaches of promise; her ever-rupturable hymen as a symbol of the very social contract. Incessantly, like the tenacious cross-examiner Sir Frederick Thesiger, Eliot "probes" transgressive women--the public speaking, the sexual--to label conclusively, to confine rhetorically. Ultimately, Adam Bede presents a far more damning indictment than Mary Barton of the century's most controversial legal cause of action. Here juridical scrutiny is unrelentingly imperious, surveillant; never empowering, redeeming.

1.See Gallagher.

2.Classical social contract theorists--Locke, Rousseau, Hobbes, that is--premise legitimate political authority upon an original, socially constitutive contract that is freely entered into by individuals in a hypothetical, pre-political "state of nature." For the two thousand year history of social contract theory, see Gough.

3.See Clark. Clark's research confirms Frost's and Gillis': inter-class seduction was in fact a statistical rarity. "The village lass," she concludes, "was more likely to be seduced by a village lad than by the squire's son" (49).

4.See Stoneman, as well, for a recognition that formalistic "disjunction" disappears once Mary Barton is viewed as an exploration of "the way in which gender-linked ideologies underpin industrial organization" (9).

5.See Valverde. Dickens' Little Em'ly and Gaskell's Ruth are, of course, other noteworthy examples of vulnerable, fictional needlewomen.

6.According to a contemporary critic, Hunt's painting, exhibited at the Royal Academy in 1854, "represents the momentary remorse of a kept mistress, whose thoughts of lost virtue, guilt, father, mother, and home, have been roused by a chance strain of music" (qtd. in Rosenblum 259). The painting's meticulous iconography was explained by John Ruskin, in a May 25, 1854 letter to the Times.

7.According to Hapke, by 1860 there were approximately two dozen such rescue societies in London alone (17). Charles Dickens, with the philanthropist Angela Burdett-Coutts, founded one, Urania Cottage, in 1847. In a January 9, 1850 letter to Dickens, Gaskell requested his assistance in arranging emigration to Australia for a certain young woman Gaskell had encountered in her own Manchester charitable endeavours.

8.See Chapter One, page 17.

9.See Chapter One, page 19. Jem knows, for example, that silence may be construed as binding (150).

10.For the rehabilitation of a "fallen," not merely "falling" heroine, see Gaskell's Ruth. William Acton, similarly, demonstrated in his ground breaking 1857 study, Prostitution, Considered in its Moral, Social, and Sanitary Aspects, in London and Other Large Cities, that a woman's "fall" might be temporary, not conclusive. Prostitutes, he discovered, regularly returned to more conventional lifestyles.

11.See Foucault.

12."The law of a place," the governing law of a contract.

13.See Michie for the use by Victorian writers of the rhetorical figure of "metatrope," an elaborate sign system that safely "frames" the female body into static art at the moment of, and in reaction to, its most intense effects (109). Gaskell's allusion to Beatrice Cenci (1577-99), who was sentenced to death for plotting the murder of her tyrannical and incestuous father, provides a nuanced and appropriate subtext of paternal crime and female heroism.

14.Margaret Hale's actions, (she embraces the mill owner, John Thornton, in a courageous attempt to shield him from violent striking workers), rather like those of an innocent breach of promise defendant, are misconstrued as "bold and forward" "indicia" of sexual attachment (183). See Harman for the inevitable sexual promiscuity mid-Victorians assigned women who thus appeared publicly, in "promiscuous company."

15.Mary Barton was published anonymously, in two volumes, on October 25, 1848 by Chapman and Hall, but the identity of the novel's author was soon well-known.

16.According to Gilead, who sees "a virtual obsession" with liminality and liminal mythic patterns in Victorian literature, liminal figures such as Mary Barton always serve the social structure from which they are temporarily detached (186). "Temporarily by-passing or transgressing the rule-governed realm," she argues, "releases psychological energies that are eventually fed back into the system" (184).

17.See Warhol.

18.Numerous echoes of Hawthorne's novel have been noted since Leavis first drew attention to the similarity in the names of the main characters. According to Stokes, Eliot and George Lewes, weather-bound in Penzance in late March of 1857, read aloud several novels, one of which was The Scarlet Letter. Only five months before beginning to write Adam Bede, apparently, Eliot reread it (92).

19.See Lefkovitz for an intriguing discussion of the biblical interpretation of late antiquity, midrash, in which the story of Dinah in Genesis 34 is read as a cautionary parable to woman "that she go not into the market place" (87). By publicly exposing her arm, the biblical Dinah was said to have provoked her own rape. Significantly, Eliot's narrator tells us, "Dinah walk[s] as simply as if she were going to market" (66).

20.See Walkowitz.

21.See Showalter, "Victorian Women and Menstruation."

22.By concluding with such a tableau years before the middle-class family was in fact historically dominant, middle-class values are universalized and political ascendency is validated. See Homans.

23.Viewed this way, the epilogue is analogous to Eliot's anonymously published 1856 essay, "Silly Novels By Lady Novelists," another plea against female public incompetence.

24.From 1853 until his death in 1878, Eliot cohabited with the married George Lewes, whose condonation of his wife's adultery banned him from divorcing.

25.See Shanley and Higgenbotham. According to Higgenbotham, one half of all deaths involving children in the Registrar General's reports were deemed infanticides and, in 1850 alone, an estimated 12,000 children were murdered without detection (258). Nevertheless, she contends, claims about an infanticide epidemic were "sometimes melodramatic" (282). "Medical men, and especially medical coroners," she observes, "had a possible stake in describing infanticide as a widespread problem. Infant mortality was one area in which they could demonstrate the social benefits of their technical expertise at a time when medical men were seeking wider recognition and professional status" (263). The Infant Life Protection Act of 1872 policed mothers and nurses, but did not enforce the financial responsibilities of fathers.

26.See Staves, "Money." Of course, the most notorious crim. con. case of the century was that brought in 1836 by George Norton, husband of writer Caroline Norton, against then Prime Minister Lord Melbourne. See Poovey, "Covered." Under the Matrimonial Causes Act of 1857, the common law action was abolished, but a husband's right to sue his wife's lover for damages in adultery was preserved under Section 33 and persisted in England until 1970. In Alberta, the common law action survives and is codified, along with the related action for enticement, under the Domestic Relations Act. As Hetty's guardian, Martin Poyser may well have had another cause of action against Arthur, either in loss of service or aggravated trespass, both of which were abolished in England under the 1970 Law Reform (Miscellaneous Provisions) Act.

27.Pateman argues that present day patriarchy originated in a collateral sexual contract overlooked by classic social contract theory by which men's orderly access to women's bodies ("sex-right") was established. "Privity of contract is the relation which exists between the immediate parties to a contract which is necessary to enable one person to sue another on it" (Osborn's 264).

28.James II sought exile in France in 1688. The following year, a unanimous House of Commons resolved that, "by breaching the original contract between king and people," James had forfeited his right to rule and, under the Revolution Settlement, the Crown was to pass to William and Mary jointly upon acceptance of the Bill of Rights. The Bill of Rights guaranteed certain individual legal rights and established a stable constitutional monarchy that endured essentially unaltered until 1832.

29.According to Higgenbotham's research, mid-Victorian women accused of infanticide were treated with "surprising leniency" at court (262). Juries, she finds, were reluctant to convict and pardons were routine. Indeed, after 1849, no woman was hanged in England for the murder of an infant under a year old (262).

30.Emphasis added. "The germ of 'Adam Bede,'" wrote Eliot in a November 30, 1858 journal entry, "was an anecdote told me by my Methodist Aunt Samuel: an anecdote from her own experience. We were sitting together one afternoon during her visit to me at Griff, probably in 1839 or 40, when it occurred to her to tell me how she had visited a condemned criminal, a very ignorant girl who had murdered her child and refused to confess--how she had stayed with her praying, through the night and

how the poor creature at last broke out into tears, and confessed her crime...The story, told me by my aunt with great feeling, affected me deeply, and I never lost the impression of that afternoon and our talk together...I determined on making what we always called in our conversation "My Aunt's Story," the subject of a long novel: which I accordingly began to write on the 22nd October 1857" (qtd. in Lawless 251-2).

CONCLUSION

Read thusly, for legal rhetoricity, in the "unwinking sun of legal inquiry," as it were, Mary Barton and Adam Bede are seen to be rewritings of the breach of promise narrative, itself a rewriting of the age-old seduction story, a story of male sexual aggression, of female victimization. Recently, feminists such as McNay have criticized poststructuralists, Foucault in particular, for a tendency to posit utter docility in the face of monolithic, inexorable power, for a failure to recognize the truly contested and contradictory nature of oppressive constraints and to acknowledge agency, especially in subject women. The feminist project requires a rediscovery and reassessment of female historical experience. As an autonomous "author" of her own "text," as an example of autonomy despite overarching social restraints, the Victorian breach of promise plaintiff, therefore, warrants further investigation.

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